

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-1/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 International Criminal Court
- 2 Trial Chamber X
- 3 Situation: Republic of Mali
- 4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
- 5 Mahmoud - ICC-01/12-01/18
- 6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and
- 7 Judge Kimberly Prost
- 8 Trial Hearing - Courtroom 1
- 9 Monday, 16 November 2020
- 10 (The hearing starts in open session at 9.33 a.m.)
- 11 THE COURT USHER: [9:33:04] All rise.
- 12 The International Criminal Court is now in session.
- 13 Please be seated.
- 14 PRESIDING JUDGE MINDUA: [9:33:33](Interpretation) Court is in session.
- 15 (Overlapping speakers)
- 16 THE INTERPRETER: [9:33:35] Message from English interpreter: There is a very
- 17 strong background sound from the remote location.
- 18 THE COURT OFFICER: [9:33:43] Thank you, Mr President.
- 19 The situation in the Republic of Mali, in the case of The Prosecutor versus Al Hassan
- 20 Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.
- 21 And for the record, we are in open session.
- 22 THE INTERPRETER: [9:34:01] Message from the English interpreter: Could
- 23 the noise from the remote location please be dealt with because we can't interpret
- 24 otherwise. Thank you very much.
- 25 PRESIDING JUDGE MINDUA: [9:34:13](Interpretation) Thank you very much,

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-2/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 courtroom officer.
- 2 It seems that there's a problem on the side of the Defence, is that true?
- 3 MS TAYLOR: [9:34:20] No, Mr President, it's the remote location.
- 4 PRESIDING JUDGE MINDUA: [9:34:33](Interpretation) Thank you so much,
- 5 Ms Taylor.
- 6 As always, we shall deal with the appearances first and foremost, starting with
- 7 the Office of the Prosecutor.
- 8 MR DUTERTRE: [9:34:44](Interpretation) Good morning, Mr President, good
- 9 morning, your Honours.
- 10 Good morning, Mr Witness. Good morning, everyone.
- 11 The Office of the Prosecutor is represented this morning by Sarah Coquillaud behind
- 12 me, Lucio Garcia to my left, and myself, Mr Gilles Dutertre. Thank you.
- 13 PRESIDING JUDGE MINDUA: [9:35:03](Interpretation) Thank you very much,
- 14 Mr Prosecutor.
- 15 Now, over to the Defence.
- 16 Ms Taylor, please.
- 17 MS TAYLOR: [9:35:07] Good morning, Mr President, good morning, your Honours.
- 18 The Defence for Mr Al Hassan is represented by Kirsty Sutherland, Molly Thomas,
- 19 Dolly Chahla and myself, and I note for the record that our client is not present in the
- 20 courtroom today and we were only informed of that this morning before the hearing.
- 21 I also note for the record that we have not been indicated as to whether there's any
- 22 solution that allows us to enjoy privileged communications with our client during
- 23 the hearings and we're waiting to hear on that point.
- 24 Thank you.
- 25 PRESIDING JUDGE MINDUA: [9:35:59](Interpretation) Thank you, Ms Taylor.

~~ICC-01/12-01/18-T-046-CONF-ENG ET 16-11-2020 3/81 NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 We shall get to that a little later.

2 Now it's over to the Legal Representatives of Victims.

3 Mr Kassongo.

4 MR KASSONGO: [9:36:08](Interpretation) Thank you, Mr President. Good
5 morning, your Honours, good morning to everybody. The Legal Representatives of
6 Victims team today still comprises Madam Claire Laplace, who is assisting me, and
7 myself, Mr Kassongo, and we would like to thank you.

8 PRESIDING JUDGE MINDUA: [9:36:22](Interpretation) Thank you very much,
9 Mr Kassongo.

10 Now, as Ms Taylor just said and for the record, I would like to confirm that
11 the accused is not present in the courtroom, but that he is following the hearing from
12 the detention facility. The Chamber has already been seized with the current
13 difficulty faced by the Defence to communicate with the accused and a solution is
14 being found as we speak with the Registry so that, were the need to arise, the Defence
15 would be able to communicate with the accused.

16 So, Ms Taylor, your concern has already been communicated to the Chamber.

17 I would like to make the most of this opportunity to point out to the parties that
18 the issue that arose last Wednesday as to the use of the witness's statement during the
19 examination-in-chief or cross-examination, this problem of course has deliberated and
20 a decision has been taken. The decision will be communicated to you over
21 the internet, as usual.

22 There we have it.

23 Good morning, Mr Witness.

24 WITNESS: MLI-OTP-P-0065 (On former oath)

25 (The witness speaks Arabic)

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-4/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 THE WITNESS: [9:38:15] (Microphone not activated)
- 2 PRESIDING JUDGE MINDUA: [9:38:20](Interpretation) Your microphone, please.
- 3 Thank you very much.
- 4 I would like to welcome you once again and thank you for your cooperation, and also
- 5 for your patience.
- 6 I would like to remind you that you are still under oath and that you must speak
- 7 the truth, the whole truth and nothing but the truth. And that you should also
- 8 remember the practical advice that I gave to you as to how to speak when you take
- 9 the floor.
- 10 So we shall now continue with your cross-examination on the part of the Defence.
- 11 For the record, I would like to remind you that we are still hearing the testimony of
- 12 Witness P-0065, that is the 16th Prosecution witness.
- 13 Over to you, Ms Taylor.
- 14 MS TAYLOR: [9:39:23] Thank you, Mr President.
- 15 I would also, before starting, ask if it's possible for the record to reflect that
- 16 Mr Al Hassan's absence is not due to any conduct on his part, but due to the issues of
- 17 COVID, if that's possible, for the record to reflect that he's not being excluded from
- 18 the courtroom for that reason.
- 19 PRESIDING JUDGE MINDUA: [9:40:00](Interpretation) Thank you very much,
- 20 Ms Taylor. You are indeed entirely right.
- 21 QUESTIONED BY MS TAYLOR: (Continuing)
- 22 Q. [9:40:09] Good morning, Mr Witness, I hope you've enjoyed a respite during
- 23 the last couple of days and the finest weather that The Hague has to offer.
- 24 A. [9:40:23] Good morning.
- 25 Q. [9:40:27] So I believe we can continue in open session and then, as before, if I

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-5/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 address any questions to you that are identifying, we'll go into private session. At
2 the same time, if you believe that your answers might identify you, please raise your
3 hand and then we can go into private session.

4 A. [9:40:54] That's understood. Thank you.

5 Q. [9:40:59] Now, Mr Witness, just some brief housekeeping.

6 At the end of last Wednesday, I noted that one of your answers wasn't reflected on
7 the transcript, that was at transcript 45, page 75, line 17. It appears that your
8 microphone wasn't on. So I'm going to repeat a question to you that was in
9 the record so that your answer can now be put in the record as well.

10 Now, Mr Witness, I asked you if it was correct that dowries were given before 2012
11 and after 2012.

12 A. [9:41:51] Yes, with regards to dowries, nothing changed before 2012, during
13 2012 and after 2012.

14 Q. [9:42:03] And, Mr Witness, at page 76 of the same transcript, lines 18 to 20, you
15 agreed that in 2012 these marriages were not seen as shameful because the women
16 were the wives of rulers.

17 Now, Mr Witness, would it be correct that in 2012, some families encouraged their
18 daughters to marry these rulers because of the family's perception that the family
19 could benefit from the position of the husband in Timbuktu at that time?

20 A. [9:42:50] Yes, and I believe the main factor was the economic factor, because
21 the city was under a very bad economic situation and these people had substantial
22 financial means and it was like a poor family marrying a rich person. That's how it
23 looked.

24 Q. [9:43:14] And, Mr Witness, would it be correct that this pressure to marry came
25 from the family itself?

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-6/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 A. [9:43:31] Sometimes there could be pressure from the family or from the girl
2 herself, because the girl has no, no other hope of, of practicing sexual life other than
3 through marriage.

4 Q. [9:43:55] I'm just going to move on to another topic now, and the point of
5 reference is tab 23 on the Prosecution's list.

6 For the record, that's OTP list -- sorry, MLI-OTP-0074-1890 at 1895, paragraph 35.

7 And the Arabic version is tab 242 on the Defence list, MLI-OTP-0078-416 at 0422,
8 paragraph 35.

9 Mr Witness, do you have our binders in front of you?

10 A. [9:44:41] I -- yes, I do have two binders. I believe both belong to Defence.

11 Q. [9:44:48] And just as a matter of housekeeping, do you also have the Prosecution
12 binders?

13 A. [9:45:00] I think so. Which binder exactly you're referring to? I have two,
14 number 1 and number 2, which one is it?

15 Q. [9:45:16] It's not necessary for you to look at the Prosecution binders yet, I just
16 wanted to make sure they were all before you.

17 So at the moment we're referring to tab 242 in the Defence binder.

18 Now, Mr Witness, is it correct that you told the Prosecution that the Islamic tribunal
19 and the *Hesbah* decided on punishments?

20 A. [9:45:48] Yes.

21 Q. [9:45:50] And the rules applied by the Islamists were taken from Sharia, they did
22 not come up with anything new outside of Sharia?

23 A. [9:46:05] Yes, but I don't know exactly or I don't recall now what powers were
24 given to each chamber or organ. I don't think everything belonged to the judiciary
25 or the *Hesbah*. I think that the *Hesbah*, the judiciary and the Islamic police each had

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-7/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 its own internal system and rules and also its own conditions and prerogatives.
- 2 Q. [9:46:46] Perhaps, Mr Witness, if we could turn to your statement, that's tab 242
- 3 on the Defence list, and if we could turn to paragraph 35.
- 4 A. [9:47:06] It's 242, right?
- 5 Q. [9:47:08] Yes.
- 6 A. [9:47:22] Which page, please?
- 7 Q. [9:47:24] It's page 0422.
- 8 A. [9:47:35] And which paragraph?
- 9 Q. [9:47:38] Thirty-five. If you could turn to last sentence where it states that "It is
- 10 my understanding that it was the Islamic Tribunal and the Hesbah who decided on
- 11 the punishments."
- 12 (Overlapping speakers)
- 13 A. [9:48:10] (Overlapping speakers)
- 14 Q. [9:48:10] Is that correct?
- 15 A. [9:48:13] Yes.
- 16 Q. [9:48:15] Your answer wasn't recorded, Mr Witness.
- 17 A. [9:48:29] I did not hear a question.
- 18 Q. [9:48:32] Mr Witness, I read to you the sentence from your statement where you
- 19 said "It is my understanding that it was the Islamic Tribunal and the Hesbah who
- 20 decided on the punishments."
- 21 Is this correct?
- 22 A. [9:48:50] It is. That is correct.
- 23 Q. [9:48:55] And is it correct that the rules were applied to everyone in Timbuktu,
- 24 irrespective of their ethnic group?
- 25 A. [9:49:09] Yes. Everyone was equal and they used to be tougher on

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020 8/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 the members of the groups. They might be -- they might get lenient with
2 the population, but they could never, could never be lenient with members of
3 Ansar Dine, as far as I knew.

4 Q. [9:49:33] And it's correct that there were different ethnicities and nationalities in
5 Ansar Dine?

6 A. [9:49:46] Yes, all ethnicities and races present in Timbuktu were represented
7 within the organisation.

8 Q. [9:49:57] Now, Mr Witness, at transcript 40, page 40, lines 6 to 8, you testified
9 that the purpose of the public execution of the punishments was to prevent
10 the actions or acts from being committed again. So would it be correct that
11 the public --

12 PRESIDING JUDGE MINDUA: [9:50:26](Interpretation) Mr Prosecutor.

13 MR DUTERTRE: [9:50:30](Interpretation) Yes, good morning.

14 We've just received the written decision from the Chamber, and I've read through it
15 very rapidly. It indicates that when we refer to a paragraph it should be read in its
16 entirety, and so I would like for the Defence to please proceed in such a manner.

17 Of course, Ms Taylor cannot read the emails while she's cross-examining the witness,
18 but I wanted to call her attention to the fact that this email has arrived in
19 the meantime. So that is valid for paragraph 35 that we have just been examining.

20 PRESIDING JUDGE MINDUA: (Interpretation) Ms Taylor, the Prosecutor is correct.
21 So we would need to read out the paragraph in question, that's paragraph 35, if my
22 memory serves me correctly.

23 MS TAYLOR: [9:51:17] Mr President, we have just received an email that we haven't
24 read. Out of fairness, I think we should be required to apply it after the break, as we
25 have not had a chance to structure our cross-examination on that basis and fairness

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-9/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 should have dictated that we received it in advance so that we could do so.
- 2 There are various aspects that we intend to address throughout our cross-examination.
- 3 There are various issues that we intend to come to at various points. If we're
- 4 informed of these matters in advance, we can structure our cross-examination
- 5 accordingly, but it's not fair to ambush the Defence in this manner with a decision
- 6 that we were not aware of and then suddenly require us retrospectively to change
- 7 the questioning of the witness.
- 8 PRESIDING JUDGE MINDUA: [9:52:32](Interpretation) Ms Taylor, you are not
- 9 being ambushed. There are cases where we need to see things in perspective.
- 10 The Prosecutor did specify that he had only just read the decision now. So you have
- 11 the benefit of the fact that you have not read the decision yourself. But what
- 12 the decision says with regards to the reading of the paragraph is but the repetition of
- 13 the decision taken by the Chamber with regard to the conduct of the proceedings.
- 14 So, this is not a difficult matter. Of course, you are working under the control of
- 15 the Chamber and the Chamber is saying to you that this is your opportunity for you
- 16 to reread this paragraph.
- 17 Now, as to the fact that you have not yet seen it, but now I'm saying that you can read
- 18 the paragraph.
- 19 Let's move forward, Ms Taylor.
- 20 MS TAYLOR: [9:53:29] Mr President, for the record, we intend to address that
- 21 paragraph in its entirety at a later point of our cross-examination.
- 22 PRESIDING JUDGE MINDUA: [9:53:47](Interpretation) Very well. Please move
- 23 forward.
- 24 MS TAYLOR: [9:53:53]
- 25 Q. [9:53:54] Mr Witness, I was putting a question to you before this objection

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-10/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 occurred concerning a statement that you made at transcript 40, page 40, lines 6 to 8,
2 where you testified that the purpose of the public execution of the punishments was
3 to prevent the actions or acts from being committed again.

4 So would it be correct, Mr Witness, that this was a form of deterrence?

5 A. [9:54:35] Yes, certainly.

6 Q. [9:54:40] And deterrence would mean that it would be less necessary to
7 implement such punishments in the future; that's correct?

8 A. [9:55:01] The question is not clear.

9 Q. [9:55:05] So if the purpose of publicly showing the punishments was to deter
10 individuals from committing these crimes in the future, the consequence of that
11 would be less crimes would be committed; that's correct?

12 A. [9:55:35] Yes.

13 Q. [9:55:36] Now after these punishments were implemented -- I'm actually going
14 to go into private session here out of an abundance of caution, with the approval of
15 the Presiding Judge.

16 PRESIDING JUDGE MINDUA: [9:55:56](Interpretation) Madam courtroom officer,
17 could we move into private session, please.

18 (Private session at 9.56 a.m.)

19 THE COURT OFFICER: [9:56:06] We're in private session, Mr President.

20 PRESIDING JUDGE MINDUA: [9:56:11](Interpretation) Thank you very much.

21 Ms Taylor.

22 MS TAYLOR: [9:56:15]

23 Q. [9:56:16] Now, after these punishments were implemented, it's correct, isn't it,

24 [REDACTED]?

25 A. [9:56:34] Yes, certainly.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-11/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 Q. [9:56:40] [REDACTED] ?
- 2 A. [9:56:51] Certainly.
- 3 Q. [9:56:55] [REDACTED]
- 4 A. [9:57:03] Yes, [REDACTED]
- 5 Q. [9:57:09] Now, before 2012, would it be correct that drug and tobacco trafficking
- 6 in the region was a source of crime and insecurity?
- 7 A. [9:57:30] Yes, drug trafficking is an organised crime worldwide and there are
- 8 aeroplanes that come to Mali from Latin America, bringing shipments of drugs and
- 9 they are delivered to northern Mali and northern Mali is considered to be the primary
- 10 delivery source for many other countries, and those -- the drugs come from Asia,
- 11 from -- and Europe. And this is something a lot bigger for any group or organisation
- 12 or any country to get involved in unless they have substantial influence. And
- 13 everything is impacted by drug trafficking there and among that is the lack -- or part
- 14 of that is the lack of security and stability.
- 15 Q. [9:58:39] Mr Witness, can I turn you to tab 253 of the Defence binder, that's
- 16 the Arabic version, that's MLI-OTP-0018-1049. And the English is tab 155 in
- 17 the Defence binder, it's MLI-D28-0004-3467.
- 18 A. [9:59:36] I have 53 here, it's in English, and I don't think it relates to your
- 19 question.
- 20 Q. [9:59:44] It's tab 253 in the Defence binder.
- 21 A. [10:00:06] I do not have 253 -- or maybe you mean the new binder. I think I do.
- 22 THE COURT OFFICER: [10:00:13] And the document is displayed on the evidence 1
- 23 channel.
- 24 MS TAYLOR: [10:00:25]
- 25 Q. [10:00:25] Mr Witness, [REDACTED] ? Is it --

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-12/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 A. [10:00:29] [REDACTED]

2 Q. [10:00:31] [REDACTED] ?

3 A. [10:00:39] [REDACTED]

4 [REDACTED]

5 Q. [10:00:53] And does it refer to Ansar Dine imposing a prohibition on the drug
6 and tobacco trade and imposing penalties against drug smugglers?

7 A. [10:01:11] Yes, there was a decision taken at the time at the end of 2012,
8 a decision taken by Iyad forbidding drug trafficking once and for all and there were
9 major campaigns carried out in that regard, one of which was carried out by Iyad's
10 own son. There were raids to many locations. I think my memory is not serving
11 me well now to cite examples, [REDACTED] subject with great importance,
12 given the importance of the subject, drugs trafficking.

13 MS TAYLOR: [10:01:55] I believe we can go into open session, Mr President.

14 PRESIDING JUDGE MINDUA: [10:02:04](Interpretation) Open session, please,
15 madam courtroom officer.

16 (Open session at 10.02 a.m.)

17 THE COURT OFFICER: [10:02:18] We are in open session, Mr President.

18 PRESIDING JUDGE MINDUA: [10:02:22](Interpretation) Thank you very much.

19 Ms Taylor, please.

20 MS TAYLOR: [10:02:27]

21 Q. [10:02:27] In 2012, is it correct that the punishment for listening to secular music
22 was to delete the music off the phone and upload a nasheed?

23 A. [10:02:51] Yes. That's what we saw. Every person caught listening in public
24 to music on his phone, on the street, or even at his home but using a loudspeaker,
25 the device holding the music would be taken from him, the music would be deleted

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-13/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 and would be replaced with sermons and nasheeds, religious nasheeds.

2 PRESIDING JUDGE MINDUA: [10:03:27](Interpretation) Mr Prosecutor.

3 MR DUTERTRE: [10:03:28](Interpretation) Yes, your Honours. The question is

4 a little general. In 2012, that does comprise a period before and after the arrival of

5 the armed groups and we don't know where in 2012 these -- this practice is applied as

6 the Defence is saying. We would like to have more specific details on the place and

7 the dates.

8 PRESIDING JUDGE MINDUA: [10:03:53](Interpretation) Ms Taylor.

9 MS TAYLOR: [10:03:53]

10 Q. [10:03:54] Mr Witness, perhaps for the record can you clarify what location

11 you're talking about and the dates?

12 A. [10:04:09] This was in Timbuktu during the Islamists' control in 2012. And

13 I believe this was the -- how the situation was like throughout that year. I did not

14 hear of any fines or punishments or whipping or any other kind of sanction that I

15 heard of. What I told you is the -- was the only reaction that I heard of when it

16 comes to listening to music.

17 Q. [10:04:45] Now, Mr Witness, if we could turn to tab 239 of the Defence binder,

18 that's MLI-OTP-0068-3201 at 3251 at paragraph 240, and it's tab 1 on the Prosecution's

19 list.

20 And for the record, that's MLI-OTP-0020-0019 at 0071, paragraph 240.

21 And, Mr Witness, can you read paragraph 240 in its entirety.

22 I believe there's a problem still with the remote location sound.

23 PRESIDING JUDGE MINDUA: [10:06:09](Interpretation) Madam courtroom officer.

24 THE COURT OFFICER: [10:06:16] I would suggest for Mr Al Hassan to make a sign

25 if he can hear us.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 MR AL HASSAN: [10:06:30](Interpretation) Yes, I can hear you.
- 2 PRESIDING JUDGE MINDUA: (Overlapping speakers)
- 3 MR AL HASSAN: (Interpretation) These are the sounds of school children nearby.
- 4 PRESIDING JUDGE MINDUA: (Interpretation) Thank you. Thank you.
- 5 MS TAYLOR: [10:06:44] That's the problem, I'm hearing them in my headphones.
- 6 I didn't know there was school children there.
- 7 PRESIDING JUDGE MINDUA: [10:07:11](Interpretation) Please continue,
- 8 Ms Taylor.
- 9 MS TAYLOR: [10:07:13] Is there any way to turn off the sound at the remote location?
- 10 I'm hearing plates, glasses, children.
- 11 THE COURT OFFICER: [10:07:24] I would suggest indeed to my colleague present
- 12 in the room with Mr Al Hassan to maybe turn off his microphone, please.
- 13 PRESIDING JUDGE MINDUA: [10:08:01](Interpretation) It's okay now I think.
- 14 Can you confirm that, madam courtroom officer?
- 15 Ms Taylor, please continue, everything is back to normal.
- 16 MS TAYLOR: [10:08:16] Thank you.
- 17 Q. [10:08:17] Mr Witness, have you read paragraph 240 in its entirety?
- 18 A. [10:08:24] I did.
- 19 Q. [10:08:26] Do you recall telling the Prosecution that you did not think that
- 20 the door was related to religion, this is the Bab Alkyama door?
- 21 MR DUTERTRE: [10:08:42](Interpretation) This is a procedural issue and also
- 22 a matter of clarification. In the Chamber's email, one reads that (Speaks English)
- 23 "counsel must quote the relevant paragraph in full". (Interpretation) And
- 24 the witness has been asked to read, so the paragraph is not on the record, and
- 25 I believe that is what is meant by "cite in full". That means everything will be clear in

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-15/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 a month or two what the question was, what the background was, just be reading
2 the transcript, you see.

3 PRESIDING JUDGE MINDUA: [10:09:29](Interpretation) Ms Taylor, you said you
4 did not read the decision, but I would like to ask you to read out the paragraph in
5 question so that it appears on the transcript.

6 MS TAYLOR: [10:09:40] Mr President, we haven't read the decision, but this is not
7 a Rule 68 witness. We're opening the door to a situation where you're going to have
8 a written statement being read into the record when he's already answered
9 information on this in accordance with the principle of orality.

10 So I'm really confused as to what we are doing here because the purpose of
11 cross-examination is to put questions to the witness, not to read out extracts of
12 a statement.

13 I do not have the benefit of this decision and it might be that the Defence really needs
14 to seek reconsideration or leave to appeal of this decision, but at this point in time it's
15 been emailed to us during the hearing and you're asking us to completely change our
16 cross-examination mid-stream. That is a matter of extreme unfairness to do that to
17 the Defence. And I'm not aware of this practice existing in any other case at this
18 Court.

19 So at this point in time the witness, as a matter of fairness, has read the paragraph in
20 its entirety. If I have to read out every single paragraph, we will be here for a year
21 for no purpose. And this was not a requirement that applied to the Prosecution. In
22 fact, the Prosecution cherry-picked from its statements throughout the entire
23 examination-in-chief and was not required to use its time to read out paragraph by
24 paragraph by paragraph.

25 So in terms of changing the procedure just at the point that we're in cross-examination,

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-16/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 that speaks to the entire fairness of this process and what we are doing here today,
2 particularly at a time when I can't consult with my client and yet I am being asked to
3 radically change my cross-examination while I'm on my feet.

4 PRESIDING JUDGE MINDUA: [10:11:40](Interpretation) The Chamber has heard
5 your arguments, Ms Taylor. You speak of the problem of fairness. You say that we
6 have changed the procedure. And, what is more, you have even raised
7 the possibility of appealing the decision. I'm going to confer with my colleagues
8 quickly before providing you with an answer.

9 MS TAYLOR: [10:12:09] Mr President, could I perhaps ask that we have a recess so
10 we can read your decision. Because it's not appropriate for me to be receiving
11 objections in the middle of cross-examination when I haven't even had the chance to
12 read the decision and consult with the client. So I do believe as a matter of
13 procedural fairness, given that the Chamber knew that it was sending this decision, it
14 would be appropriate to give us an adjournment so at the very least we can read it
15 and have at the very least some time to reorganise ourselves on the basis of this new
16 determination.

17 (Trial Chamber confers)

18 PRESIDING JUDGE MINDUA: [10:13:45](Interpretation) Ms Taylor, as usual,
19 the Chamber takes the objections very seriously. As far as you are concerned right
20 now, the Chamber is giving you five minutes to read this decision, the decision that
21 was taken. And you will see that the decision is merely confirmation of what has
22 already been decided.

23 You have five minutes to read the decision and then, after that, we shall continue.

24 MS TAYLOR: [10:14:23] Mr President, does that mean that I will not have
25 the opportunity to consult with my client before we continue?

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-17/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 PRESIDING JUDGE MINDUA: [10:14:33](Interpretation) You haven't read
2 the decision yet. You may not need to consult the client.
3 (Pause in proceedings)
4 PRESIDING JUDGE MINDUA: [10:16:50](Interpretation) Ms Taylor, are you ready?
5 MS TAYLOR: [10:16:54] Thank you, Mr President.
6 As a point of clarification, how are we supposed to reconcile this with the openness of
7 proceedings, because the way that paragraphs are formulated, there's necessarily
8 going to be elements which might identify the witness.
9 If we have to read them on the record each and every time, that means we'll be
10 jumping in and out of open and private session the entire day.
11 PRESIDING JUDGE MINDUA: [10:17:30](Interpretation) We will alternate, as we
12 did with the OTP, counting on your sense of responsibility, of course.
13 As you can see, what you're asking -- what we're asking is not very complicated, it's
14 just a reminder of paragraph 57 from our decision on the conduct of proceedings. So
15 please proceed, Ms Taylor.
16 MS TAYLOR: [10:17:57]
17 Q. [10:18:00] Mr Witness, I'm going to reframe my questioning.
18 Is it correct, Mr Witness, that the story that opening the door of Bab Alkyama was just
19 a story told to children to stop them from going into the cemetery?
20 A. [10:18:26] For further clarification, the Alkyama door is a historic door present
21 there and it has a cultural value. It also has -- it also is significant in attracting
22 tourists. The story I wouldn't say is said to the young or to the elderly, the story
23 attached to this door itself is that if it's opened, we will have the day of resurrection.
24 This is the widespread story about it.
25 Q. [10:19:04] And, Mr Witness, does this story derive from religion or myth?

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-18/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 A. [10:19:17] It's part of the heritage or folklore stories believed in the city.

2 Nothing to do with religion.

3 Q. [10:19:31] Mr Witness, can you remember the imam Al Kounti speaking before
4 the door of the cemetery was being taken down?

5 A. [10:19:46] I do.

6 Q. [10:19:50] And did it appear to you that he seemed to consent to its removal?

7 A. [10:20:02] To be more precise, he doesn't have the power to give consent or to
8 prohibit, he could only surrender, because those who came to break the door were
9 more powerful and are the ones who had the authority, and they were there to
10 execute a security direction, not to discuss with him. And whether he gave his
11 consent or not, that wouldn't have changed anything.

12 But, indeed, it did look to them as if he approves of that. They came with arguments
13 from the Koran and no imam would say no to something Koranically justified. But
14 everyone has their own interpretation of a Koranic verse and that time was the time of
15 enforcing something. Not the context for a religious debate or dialogue.

16 Q. [10:21:11] Now, Mr Witness, on the first day of your testimony, and this is
17 transcript 37, page 23, lines 6 to 11, you referred to the Festival of the Desert and you
18 testified that it wasn't held in 2012.

19 Mr Witness, were you aware that the location of the Festival of the Desert had in fact
20 been moved in 2010 due to security concerns raised by western governments, such as
21 France?

22 A. [10:22:13] There is something called the Desert Festival and it's for nomad music
23 organised annually in Timbuktu. Certainly there are always security concerns, valid
24 even today in Mali, and many western countries classify that region as a red region
25 and advises nationals not to go there, and sometimes enforces them not to be there for

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-19/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 fear of being kidnapped. If I understood your question well.

2 Q. [10:22:54] Mr Witness, were you aware that the Festival of the Desert was in fact
3 held in January and February 2012, but again with security warnings concerning
4 the risk to tourists?

5 A. [10:23:16] Yes, and there were security precautions and there was security
6 present in a noticeable way. And I attended in person this festival and there were
7 security precautions taken. Everyone knows that in the last edition of that festival in
8 Timbuktu, the armed groups took action from the location where they created their
9 groups in northern Kidal in the Zakak area. They moved from there to the cities to
10 take control and to kick out the Malian army.

11 Q. [10:24:03] Mr Witness, were you aware that the Festival of the Desert has not
12 been held in Timbuktu in recent years because of the security situation?

13 A. [10:24:19] Yes. But there are other editions that were not held in Timbuktu.
14 They were instead held in the form of carnivals in other countries in refugee camps.

15 Q. [10:24:40] So, speaking specifically of Timbuktu, would it be correct that security
16 issues had and continue to have a significant impact on cultural events in Timbuktu,
17 both before and after 2012?

18 A. [10:25:05] Certainly, until now.

19 Q. [10:25:11] Now, Mr Witness, the Prosecution asked you a series of questions as
20 concerns life in Timbuktu before 2012. Would you agree that Timbuktu was and
21 continues to be more religiously conservative than Bamako and certain parts of Mali?

22 A. [10:25:35] I cannot say that Timbuktu and Bamako, prior to 2012. There was
23 the same system, the same laws. Life is different only in terms of the person's
24 freedom of belief and freedom to hold extremist views or to be secular and
25 open-minded and so on and so forth. But Timbuktu in 2012 changed the face of the

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-20/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 region in general. I mean the whole Timbuktu region, not just the city.

2 Q. [10:26:14] Mr Witness, would it be fair to say that you've spoken to individuals
3 in Timbuktu during and after 2012 concerning their views regarding Sharia law?

4 A. [10:26:40] Let me go back to the comparison between Timbuktu and Bamako.
5 It is true that in Timbuktu tribal dignitaries and, in general, the dignitaries of society
6 before 2012, they did not allow nightclubs to exist, nor did they allow brothels.
7 These were not allowed in Timbuktu even before 2012.

8 As to your last question, I couldn't really grasp what you asked about. If you can
9 please rephrase it.

10 Q. [10:27:21] Have you spoken to individuals -- perhaps I should go into private
11 session.

12 PRESIDING JUDGE MINDUA: [10:27:35](Interpretation) Private session, please,
13 courtroom officer.

14 (Private session at 10.27 a.m.)

15 THE COURT OFFICER: [10:27:46] We are in private session, Mr President.

16 PRESIDING JUDGE MINDUA: [10:27:57](Interpretation) Thank you very much.
17 Ms Taylor.

18 MS TAYLOR: [10:28:00]

19 Q. [10:28:00] Now, Mr Witness, [REDACTED] have you
20 spoken to individuals in Timbuktu during and after 2012 concerning their views
21 towards Sharia law?

22 A. [10:28:24] Yes.

23 Q. [10:28:28] So, Mr Witness, can I turn you to tab 164 of the Defence list, it's
24 MLI-D28-004-3482, specifically turning to page 3486.

25 Now, Mr Witness, if you can turn to the first page, you can see that this is a survey

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-21/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 [REDACTED] in June 2018. And if we could turn to page 3486, this
2 sets out the results of the survey in 2017. In particular, it states that 63 per cent of
3 those surveyed in Timbuktu supported the application of Sharia law.
4 MR DUTERTRE: [10:30:28](Interpretation) Your Honour.
5 PRESIDING JUDGE MINDUA: [10:30:30](Interpretation) Mr Prosecutor.
6 MR DUTERTRE: [10:30:32](Interpretation) I object to this document being shown to
7 the witness. It does not come from him. It has not been established whether or not
8 he is familiar with it. He is -- he's being asked about statistical information. I don't
9 really see where this is coming from. This can only lead to conjecture and
10 speculation on the part of the witness.
11 PRESIDING JUDGE MINDUA: [10:30:58](Interpretation) I beg your pardon, I didn't
12 hear the first part of your objection.
13 MR DUTERTRE: [10:31:04](Interpretation) Yes, your Honour.
14 It has not been established whether the witness is familiar with this document,
15 whether he knows anything about [REDACTED] whether he knows about
16 the reliability [REDACTED] and we really have no idea whether or not he is in
17 a position to discuss this statistical information. And this will just lead to conjecture
18 and speculation, which will not be helpful to the Chamber.
19 We do not know how these statistics were drawn up and --
20 MS TAYLOR: [10:31:34](Overlapping speakers) If I may interrupt --
21 MR DUTERTRE: [10:31:34](Interpretation)(Overlapping speakers) -- as you well
22 know, statistics can (Overlapping speakers)
23 PRESIDING JUDGE MINDUA: [10:31:45](Interpretation) Ms Taylor.
24 MS TAYLOR: [10:31:45](Overlapping speakers) The witness is in the courtroom.
25 Now having read the Chamber's decision, the Prosecutor has now flown in the face of

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-22/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 that decision. Now I would ask that the witness not be present in the courtroom
2 when the Prosecutor makes these substantive objections.

3 PRESIDING JUDGE MINDUA: [10:32:14](Interpretation) Ms Taylor,
4 the Prosecutor's question has to do with the document. It's not even about -- this
5 document -- well, you have to establish that the witness is familiar with it and I did
6 not hear any such question from you.

7 MS TAYLOR: [10:32:34] Mr President, I hadn't finished my line of questioning.

8 And if I were to now explain those questions to you in front of the witness, that
9 would defeat the point of cross-examination.

10 As was set out in the Chamber's email this morning, these types of objections should
11 not be made in the presence of the witness. The Prosecutor has now put forward
12 substantive views concerning the content of this document and, once again,
13 telegraphed their position on this document. That's prejudicial. It should not occur
14 and it is repeatedly occurring.

15 So we ask that each and every time the Prosecutor makes these types of objections
16 they ask for the witness to be excused, because by the time we are heard, it's too late.
17 The prejudice is out of the box. We can't draw it back because the witness has heard.
18 So I would ask, in accordance with the email ruling this morning, that before we
19 proceed further the witness be asked to be excused, so I can exercise my right to be
20 heard in response.

21 PRESIDING JUDGE MINDUA: [10:34:01](Interpretation) Ms Taylor, with regard to
22 this particular issue, I think that you need to put the witness the question. With
23 regard to the statistics, I agree with the Prosecutor, that the witness is not supposed to
24 give a lot of details with regard to the statistics.

25 Now please put your question and let's move ahead, because we're losing time.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-23/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 MS TAYLOR: [10:34:30] Thank you, Mr President.

2 Q. [10:34:31] Now, Mr Witness, you've seen this page and I've read out to you
3 the statistic, that 63 per cent of those surveyed [REDACTED] in Timbuktu in 2017
4 supported the application of Sharia law.

5 And, Mr Witness, are these findings consistent with your interactions with the local
6 population in Timbuktu?

7 MR DUTERTRE: [10:35:09](Interpretation) Mr President, I'm still maintaining my
8 objection. It's not been established. It's a third-party document. We need to
9 establish the awareness or knowledge that the witness has of this document, it's just
10 procedural, and whether -- as to whether he can comment on it or not.

11 PRESIDING JUDGE MINDUA: [10:35:26](Interpretation) Ms Taylor, I believe that I
12 have asked you to ask the witness whether he knew the document or is aware of the
13 document. You need to establish this, what is the link between the witness and this
14 document.

15 MS TAYLOR: [10:35:38] Mr President, I've established that the witness interacted
16 with persons in Timbuktu, and that before and after 2012 he asked them about their
17 views concerning Sharia law.

18 I am now asking him, on the basis of his interactions with these individuals, whether
19 the views he received or heard are consistent with this document. We're entitled to
20 confront a witness with documents. That's what I am doing. We do not need to
21 establish that the witness authored the document.

22 In fact, the Prosecution were permitted to show photographs of an incident where
23 the witness wasn't even there and questions were put to him on the basis of that
24 photograph.

25 Fairness dictates that we be allowed to do the same, given that the door was opened

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-24/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 by the Prosecutor repeatedly to ask this witness about their view -- his views
2 concerning life in Timbuktu during 2012 and before 2012.
3 So we are therefore entitled to ask him about his views of life in Timbuktu during
4 2012, before 2012 and after 2012.
5 PRESIDING JUDGE MINDUA: [10:37:15](Interpretation) Now, let us proceed,
6 Ms Taylor. You have established your foundation.
7 Mr Witness, of course, you're not a mathematician, you're not a statistician and you're
8 going to just be answering according to your knowledge of the situation in Timbuktu.
9 There we are.
10 Mr Witness, please answer the question.
11 And, Mr Prosecutor, I think you need to be (Overlapping speakers)
12 MR DUTERTRE: [10:37:42](Interpretation) I think it's 2017, so I'm a little bit lost here.
13 I just wanted to say that.
14 PRESIDING JUDGE MINDUA: [10:37:48](Interpretation) I've already asked
15 the witness the question. He is not a statistician. We're talking about Timbuktu in
16 the period that concerns us. Please go ahead, Mr Witness, answer the question.
17 THE WITNESS: [10:38:09](Interpretation) First of all, I know very well that I'm
18 under oath and I know very well the implications of that. There's no document or
19 report that can in any way impact what I say or what I'm about to say. Anything
20 that I have testified with, now or previously, is something I'm giving out of my
21 memory and today I'm giving -- and what I'm giving now is I'm giving out of my own
22 memory. I was in Timbuktu during 2012 and before 2012, and I've also been to
23 Timbuktu [REDACTED] after 2012, and I'm in constant communication with
24 brothers, relatives and friends in Timbuktu, constantly.
25 In 2012, everyone was equal, rich and poor. When it comes to justice, the 2012

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 period was the ideal time for people in Timbuktu. There was no bribery and there
2 was no way to escape justice whatsoever, whatever your means are, contrary to how
3 things were before 2012.
4 After 2012 it become -- it became a chaos. There became -- the Malian -- there came
5 the Malian army that supported youth groups whom -- who were never -- they
6 wanted to attack or steal the shops of fair-skinned people. They would stage
7 a protest during which they kill, burn, steal. There were even rapes in the homes of
8 Arabs. Whenever a vehicle is stolen, a number of black-skinned young people
9 would come and steal shops under the pretext of protesting for democracy and
10 manifesting freedom of protest as a right.
11 Recently, there was a person who was killed and the murderer is not yet known.
12 There are no witnesses as who committed the murder. And the same ethnic groups
13 rose again and broke into the homes of Arabs.
14 There was even one home broken into where there were two women and there was
15 no man and the allegation is that someone jumped into the house and aggressed
16 everyone. It's turned into widespread looting and chaos and killing.
17 During 2012, however, there was no way that the rules can be violated because any
18 violation would not go unpunished, not the money and not the connections, and not
19 anything else whatsoever.
20 PRESIDING JUDGE MINDUA: [10:41:33](Interpretation) Ms Taylor, your question
21 was relevant to 2012 and as to what happened in 2012; is that correct?
22 MS TAYLOR: [10:41:41] Mr President, I believe the witness has answered.
23 PRESIDING JUDGE MINDUA: [10:41:49](Interpretation) There we are.
24 Mr Witness, please just answer the questions put to you by the Defence. Thank you.
25 Ms Taylor, please proceed.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 MS TAYLOR: [10:41:59]
- 2 Q. [10:42:00] Mr Witness, [REDACTED] ?
- 3 A. [10:42:12] [REDACTED]
- 4 [REDACTED]
- 5 Q. [10:42:22] And he originates from Timbuktu; that's correct?
- 6 A. [10:42:31] What I know is that he is from the Kounta. Whether he is from
- 7 Timbuktu exactly or not, that I cannot confirm.
- 8 Q. [10:42:41] Mr Witness, can I --
- 9 PRESIDING JUDGE MINDUA: [10:42:44](Interpretation) Ms Taylor, are we staying
- 10 in private session?
- 11 MS TAYLOR: [10:42:49] Yes, because I was just asking him about his knowledge [REDACTED]
- 12 [REDACTED]
- 13 PRESIDING JUDGE MINDUA: [10:43:01](Interpretation) Please proceed.
- 14 MS TAYLOR: [10:43:03]
- 15 Q. [10:43:03] Mr Witness, can we turn to tab 47 on the Defence list, that's
- 16 [REDACTED]
- 17 A. [10:43:57] Yes.
- 18 Q. [10:43:58] [REDACTED] ?
- 19 A. [10:44:09] I think it -- it's [REDACTED] yes.
- 20 Q. [10:44:17] Mr Witness, which city can you see shown in these photos?
- 21 A. [10:44:32] I cannot confirm from these images.
- 22 Q. [10:44:38] Mr Witness, did you meet the imam Daoud Cissé when you were in
- 23 Timbuktu in 2012?
- 24 A. [10:44:56] I met a lot of imams, but I remember [REDACTED]
- 25 the imam of Djinguereber and Sankoré, but I don't recall the names.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 Q. [10:45:09] Mr Witness, if you look at the photograph at the top on the left, and
2 the person at the far right of that photograph, does that person look familiar to you?

3 A. [10:45:41] Yes.

4 Q. [10:45:42] Can you say why the person looks familiar to you?

5 A. [10:45:51] This is [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] These are the times I
9 remember. We might have met other times too, but these are the times I remember.
10 And we've been in contact sometimes on WhatsApp.

11 Q. [10:46:28] I apologise, Mr Witness, I believe I may have been showing you
12 the wrong photo. If you can look under the photo of [REDACTED] there's four
13 photographs put together. And if you could look at the photo at the top on the left,
14 there should be four individuals at the front, one of whom has a microphone.
15 Do you have that in front of you? It's tab 47.

16 A. [10:47:00] I do.

17 Q. [10:47:02] Do you recognise the person with the microphone?

18 A. [10:47:09] It's a familiar face, but I don't remember precisely who this person is
19 to the extent that I could identify precisely the person.

20 Q. [10:47:21] Is it possible that it's someone you saw in 2012?

21 A. [10:47:34] Might be the case. This is a familiar face, but I cannot determine
22 when, where or how.

23 Q. [10:47:43] And, Mr Witness, do you happen to know what these images
24 concern?

25 A. [10:47:58] I don't.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 Q. [10:48:02] Mr Witness, [REDACTED] did you hear any [REDACTED]
2 [REDACTED] marches in Timbuktu in relation to the representation of the pictures of
3 the prophet?

4 A. [10:48:40] Yes, whenever any cartoons that are defamatory to the prophet, peace
5 be upon him, there would be protests. Not only in Timbuktu, but also in other areas.

6 THE ARABIC INTERPRETER: [10:48:59] Sorry: but also in all areas.

7 MS TAYLOR: [10:49:03]

8 Q. [10:49:04] Mr Witness, can I turn you to tab 79 in the Defence binder, that's
9 MLI-D28-0004-3186.

10 A. [10:49:38] Yes.

11 Q. [10:49:39] Are you familiar with the imam Ben Essayouti and the imam
12 Mahmoud Dicko?

13 A. [10:49:52] I am [REDACTED]
14 The one appearing on the picture at the top is the imam of Djinguereber, and down is
15 Imam Dicko, [REDACTED]

16 [REDACTED]
17 Q. [10:50:26] Mr Witness, in 2010, did you hear anything about a *comité des mœurs*
18 being formed in Timbuktu?

19 A. [10:50:53] The question is not clear. It might have been an incomplete
20 rendering in the target language.

21 Q. [10:51:06] I'll break it down translation wise.

22 Mr Witness, a *comité des mœurs*, does that mean a virtue committee or a committee for
23 virtue?

24 A. [10:51:23] I don't remember anything in that regard.

25 Q. [10:51:30] So, Mr Witness, you weren't aware of meetings concerning

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-29/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 the establishment of a committee for virtues in 2010 in Timbuktu?

2 A. [10:51:48] I don't remember now. I might have known such thing at the time,
3 but now I don't remember it.

4 Q. [10:51:57] Well, perhaps if we can turn then to tab 112 of the Defence list, that's
5 MLI-D28-004-3335.

6 This refers to a resolution issued by a general assembly on 12 June 2010, and it sets
7 out recommendations, including respect for dress rules, putting in place a virtue
8 committee in each quarter, measures to prohibit any form of circulation during Friday
9 prayers, and the restriction of the proliferation of bars.

10 Have you had a chance to look through this document, Mr Witness?

11 MR DUTERTRE: [10:53:30](No interpretation)

12 THE WITNESS: [10:53:32](Interpretation) I've seen the document, but --

13 PRESIDING JUDGE MINDUA: [10:53:38](Interpretation) Prosecutor, please.

14 MR DUTERTRE: [10:53:40](Interpretation) Yes, I'm going to object on a procedural
15 basis. We need to ask the witness if he knows this document. And, you know, it's
16 the same thing on each occasion, I'm getting to my feet on each occasion, we need to
17 establish the foundation of the witness's knowledge.

18 PRESIDING JUDGE MINDUA: (Interpretation) You don't need to get to your feet
19 every time.

20 Ms Taylor, remember that for the preceding document I asked you to set a foundation
21 first and foremost to ask the witness whether he is aware of the document and then
22 proceed.

23 MS TAYLOR: [10:54:15] Yes, Mr President. I haven't asked my questions yet.

24 I was describing the document for the record. I'm happy to read out the entire
25 document for the record.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-30/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 PRESIDING JUDGE MINDUA: [10:54:38](Interpretation) That is an exaggeration,
2 that is not setting the foundation for a document. Now let's proceed more seriously.

3 MS TAYLOR: [10:54:46]

4 Q. [10:54:47] Now, Mr Witness, in your last answer you said you don't remember
5 now, although you might have known of these things then. Now, as someone who
6 was asked questions about life in Timbuktu before 2012, were you aware of this
7 general assembly resolution?

8 A. [10:55:10] No.

9 Q. [10:55:15] The imam we just mentioned, that was Mahmoud Dicko, is it correct
10 he comes from Timbuktu?

11 A. [10:55:26] I don't know. I met him, I know he's from the Fulan, but I did not
12 ask him where he's from, nor did I give importance to that, so I don't know.

13 Q. [10:55:41] Mr Witness, if I could turn you to tab 61 on the Defence list, that's
14 MLI-D28-0004-3108 at 3110.

15 If I could refer --

16 A. [10:56:41] Yes.

17 Q. [10:56:43] -- specifically to page 3110. Mr Witness, were you aware that in 2009
18 Imam Dicko organised a demonstration of over 50,000 persons in Bamako to protest
19 against amendments to the family law?

20 A. [10:57:10] Yes.

21 Q. [10:57:19] And was this opposition because he objected to changes that had been
22 made to the status of religious marriages and the proposal to raise the age of consent?

23 A. [10:57:35] Yes. I do not recall exactly, but there were a number of new laws
24 regarding family under the reign of ATT, which Dicko opposed and so did a large
25 number of Mali's scholars. There were very popular protests organised by Dicko in

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-31/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 Bamako.

2 Q. [10:58:12] Mr Witness, are you familiar with the term "female genital
3 mutilation"?

4 A. [10:58:22] (Overlapping speakers)

5 PRESIDING JUDGE MINDUA: [10:58:25](Interpretation) Ms Taylor, can we go back
6 into open session?

7 MS TAYLOR: [10:58:29] Yes.

8 PRESIDING JUDGE MINDUA: [10:58:34](Interpretation) Madam courtroom officer,
9 open session, please.

10 (Open session at 10.58 a.m.)

11 THE COURT OFFICER: [10:58:44] We are back in open session, Mr President.

12 PRESIDING JUDGE MINDUA: [10:58:53](Interpretation) Thank you very much.
13 Ms Taylor.

14 MS TAYLOR: [10:58:55]

15 Q. [10:58:57] Mr Witness, I believe your answer wasn't reflected on the record.

16 A. [10:59:04] Female genital mutilation, that subject I know in general. I know it
17 as everyone knows it. [REDACTED] I don't know much
18 about its application or about its problems.

19 Q. [10:59:28] [REDACTED]

20 [REDACTED]?

21 A. [10:59:37] Yes.

22 Q. [10:59:41] And, Mr Witness, to your knowledge, Ansar Dine didn't seek to
23 introduce this practice into Timbuktu in 2012, did they?

24 A. [10:59:52] That is correct.

25 Q. [10:59:57] Are you aware as to whether this, this practice exists in Bamako and

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-32/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 elsewhere in Mali?

2 A. [11:00:11] There are many regions, I don't know where it can be possibly applied.

3 But in some parts it's a tradition and I don't know which tribes exactly have that habit.

4 MS TAYLOR: [11:00:31] Mr President, it's 11 o'clock so it might be a good time for
5 the break.

6 PRESIDING JUDGE MINDUA: [11:00:40](Interpretation) You're right, Ms Taylor.

7 We shall rise for half an hour and we shall reconvene at 11 o'clock.

8 The hearing is suspended.

9 THE COURT USHER: [11:00:52] All rise.

10 (Recess taken at 11.00 a.m.)

11 (Upon resuming in open session at 11.32 a.m.)

12 THE COURT USHER: [11:32:18] All rise.

13 Please be seated.

14 PRESIDING JUDGE MINDUA: [11:32:42](Interpretation) We shall now resume
15 today's hearing and we shall continue with cross-examination by the Defence.

16 Ms Taylor, please proceed.

17 MS TAYLOR: [11:32:54] Thank you, Mr President.

18 We would like to note for the record that we are still not able to exercise our right to
19 conduct privileged communications with our client, so we have not been able to
20 consult during the break.

21 PRESIDING JUDGE MINDUA: [11:33:17](Interpretation) Yes, unfortunately that is
22 so. The technician came to work on the problem, but was not able to solve it.

23 Please, please proceed.

24 MS TAYLOR: [11:33:29]

25 Q. [11:33:32] Mr Witness, it's correct that many of the leaders that were present in

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-33/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 Timbuktu were Mauritanian?

2 A. [11:33:47] Yes.

3 PRESIDING JUDGE MINDUA: [11:33:51] (Interpretation) *Mr Prosecutor.

4 MR DUTERTRE: [11:33:56] (Interpretation) *I don't know if it is a translation issue,
5 but we do not know at what time, what date or when. A few moments ago as well,
6 there were some questions about 2012, we do not know if it was before 2012, or after
7 the occupation.

8 PRESIDING JUDGE MINDUA: [11:34:13] (Interpretation) *Ms Taylor, rephrase the
9 question, please.

10 MS TAYLOR:

11 Q. [11:34:14] During the period in question.

12 A. [11:34:24] Yes. And to be more precise and clear, the city of Timbuktu in 2012
13 was under the control of the Al-Fourqane battalion and the Tariq ibn Ziyad battalion.
14 The Al-Fourqane battalion was mostly made up of Mauritanians whom in majority
15 did carry out the activities in the city.

16 Q. [11:34:57] Mr Witness, are you aware that the Mauritanian penal code applies
17 Sharia law?

18 A. [11:35:15] The translation is not clear.

19 MS TAYLOR: [11:35:22] Perhaps if we can go into private session.

20 PRESIDING JUDGE MINDUA: [11:35:34](Interpretation) Private session, please,
21 courtroom officer.

22 (Private session at 11.35 a.m.)

23 THE COURT OFFICER: [11:35:46] We are in private session, Mr President.

24 PRESIDING JUDGE MINDUA: [11:35:49](Interpretation) Thank you.

25 Ms Taylor.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-34/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 MS TAYLOR: [11:35:52]

2 Q. [11:35:52] Mr Witness, it's correct that [REDACTED] ?

3 A. [11:35:58] Yes.

4 Q. [11:36:02] [REDACTED]
5 [REDACTED] ?

6 A. [11:36:16] [REDACTED]

7 Q. [11:36:25] Mr Witness, were you aware that the Mauritanian penal code applies
8 Sharia law?

9 A. [11:36:36] As far as I know, not in every detail, but it used to be the case in
10 Mauritania.

11 Q. [11:36:48] Mr Witness, could you turn to tab 55 on the Defence list, that's
12 MLI-D28-0004-3004, if you could turn to page 3008.

13 Mr Witness, when you look at article 3, does it refer to *hudud* crimes?

14 MR DUTERTRE: [11:37:56](Interpretation) Your Honour.

15 PRESIDING JUDGE MINDUA: [11:37:59](Interpretation) Mr Prosecutor.

16 MR DUTERTRE: [11:38:02](Interpretation) Once again, the same thing. Has
17 the witness seen this document previously and, if so, what capacity does he have to
18 make comments on the criminal code to -- of Mauritania? I object to this line of
19 questioning. He was asked about the law that prevailed in Mauritania in the past.

20 PRESIDING JUDGE MINDUA: [11:38:33](Interpretation) Ms Taylor.

21 MS TAYLOR: [11:38:34] Mr President, the Prosecutor during examination-in-chief
22 asked this witness to explain the difference between *hudud* crimes and *tazir* crimes.

23 So, again, the Prosecution opened that door by asking this witness questions
24 concerning Sharia law. This witness has said that many of the persons, including
25 leaders, who were present in Timbuktu were from Mauritania. That therefore gives

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-35/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 the basis to the Defence to pose questions to the witness concerning Mauritanian law.

2 PRESIDING JUDGE MINDUA: [11:39:20](Interpretation) Well, the witness did

3 make a distinction between the two categories of crime -- or, rather, punishment.

4 But now we find ourselves dealing with a legal text, order 83162 of 9 July 1983, and I

5 do wonder whether the witness has the scientific abilities to discuss this particular

6 piece of legislation.

7 I allow the question, but we must realise that the witness is not -- does not have legal

8 training.

9 Please proceed.

10 MS TAYLOR: [11:40:09]

11 Q. [11:40:09] Mr Witness, can you turn to page 3066 -- 3065 and 3066.

12 A. [11:40:41] Do you mean from the same document or is that just

13 the page number?

14 Q. [11:40:47] Yes, from the same document. The page numbers are 3065 and 3066.

15 A. [11:41:01] The ERN, please.

16 Q. [11:41:03] The ERN of the entire document is MLI- (Overlapping speakers)

17 A. [11:41:11] Is it 112?

18 Q. [11:41:13] We're dealing with tab 55. The number that is on the first page - it

19 was a document you were looking at previously - MLI-D28-0004-3004, and the pages

20 are 3065, at the bottom, and 3066.

21 A. [11:41:43] Yes.

22 Q. [11:41:44] Mr Witness, [REDACTED] in Mauritania, were you aware

23 that adultery was penalised and could be punished by lashing?

24 A. [11:41:58] [REDACTED] I did not know anything about

25 the laws of Mauritania. But I know very well that *hudud* or religious punishments

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-36/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 were applied in Mauritania. When the *hudud* became applied in Timbuktu, many
2 people said to me that they had seen already these *hudud* and the amputation of arms.
3 They did see those things happening in Mauritania when they were young, but
4 I believe that changed under Mauritanian law. As to my knowledge of Mauritanian
5 laws, I don't know anything about them.

6 Q. [11:42:43] Mr Witness, if you could turn to tab 51 of the Defence binder, that's
7 MLI-D28-0004-2968.

8 PRESIDING JUDGE MINDUA: [11:43:01](Interpretation) Ms Taylor, shall we
9 remain in private session?

10 MS TAYLOR: [11:43:08] Yes, because I'm putting to him a question on the basis of
11 his knowledge [REDACTED]

12 PRESIDING JUDGE MINDUA: [11:43:19](Interpretation) Very well.
13 Go ahead.

14 MS TAYLOR: [11:43:28]

15 Q. [11:43:28] And, Mr Witness, if you could turn to page 2970 of that document.

16 A. [11:43:42] Yes.

17 Q. [11:43:44] [REDACTED]

18 MR DUTERTRE: [11:43:47](Interpretation) Your Honour.

19 PRESIDING JUDGE MINDUA: [11:43:49](Interpretation) Yes.

20 MR DUTERTRE: [11:43:52](Interpretation) Once again the same thing. The witness
21 has not been asked whether he was familiar to -- familiar with the document. I think
22 this line of questioning is only going to lead to conjecture and speculation.

23 PRESIDING JUDGE MINDUA: [11:44:11](Interpretation) Weren't you rather quick
24 on the draw? We just got the tab number a moment or two ago and already you are
25 on your feet. Perhaps we should allow Ms Taylor to put her question. Let us wait

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-37/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 a little bit and see where counsel is going.
- 2 MR DUTERTRE: [11:44:36](Interpretation) But Ms Taylor led the witness directly to
- 3 a particular page without asking the witness whether the witness was familiar with
- 4 the document, so already she's skipped over one or two steps.
- 5 PRESIDING JUDGE MINDUA: [11:44:54](Interpretation) Very well.
- 6 Ms Taylor, I believe I did miss that point. Now, perhaps it would be a good idea to
- 7 establish the foundation for the question and begin by asking the witness whether he
- 8 is familiar with the document.
- 9 MS TAYLOR: [11:45:13] Mr President, I was about to ask the witness if he's familiar
- 10 with the case referred to at this page, the rest of the document is not relevant.
- 11 So if I could please put my question to the witness, which was -- had the purpose of
- 12 laying the foundation.
- 13 Q. [11:45:35] Now, Mr Witness --
- 14 PRESIDING JUDGE MINDUA: [11:45:37](Interpretation) Go ahead, go ahead.
- 15 MS TAYLOR: [11:45:41]
- 16 Q. [11:45:42] [REDACTED] are you aware of the 2014 apostasy case concerning
- 17 Mohamed Cheikh Ould M'Kheir?
- 18 A. [11:46:02] Yes, certainly.
- 19 Q. [11:46:09] And was it correct that this person was found guilty of apostasy and
- 20 sentenced to death?
- 21 A. [11:46:24] Yes.
- 22 Q. [11:46:27] So it would suggest that in 2014 these laws were being applied in
- 23 Mauritania?
- 24 A. [11:46:42] I did follow this case because this was a public opinion issue, but I do
- 25 not have knowledge about the laws.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 Q. [11:46:56] Now, Mr Witness, in terms of the workings of the Islamic tribunal in
2 2012 in Timbuktu, is it correct that [REDACTED] Houka Houka, [REDACTED]
3 [REDACTED] found the job difficult?
- 4 A. [11:47:21] Yes.
- 5 Q. [11:47:25] [REDACTED] he had to make a decision on
6 the amputation?
- 7 A. [11:47:43] Yes.
- 8 Q. [11:47:43] So, Mr Witness, did that suggest to you that he felt that he had been
9 compelled to take that decision by Al-Qaeda?
- 10 A. [11:47:58] There isn't an obligation to make a decision. The judge is asked what
11 does Sharia say on a particular matter, the judge would respond by laying out what
12 Sharia says about the matter.
- 13 Q. [11:48:18] Now, [REDACTED]
14 [REDACTED] Al-Qaeda tried to make Houka Houka seem more important than he was?
- 15 A. [11:48:43] Yes. They always try to hide behind the locals and to make it look
16 like the locals are managing what happens in Timbuktu [REDACTED]
17 [REDACTED]
- 18 Q. [11:49:04] So they tried to make him look like he had more power than he
19 actually had?
- 20 A. [11:49:16] Certainly.
- 21 Q. [11:49:21] Now, [REDACTED] Houka Houka was there,
22 but the judges were all Malian; that's correct?
- 23 A. [11:49:32] Yes.
- 24 Q. [11:49:37] And the topics that were discussed [REDACTED]
25 trade issues and matters concerning wells?

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-39/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 A. [11:49:48] Yes.
- 2 Q. [11:49:52] So would it be fair to say that when the locals were present it was just
3 like a regular court?
- 4 A. [11:50:10] There isn't a resemblance between the Sharia tribunals and the other
5 civilian regime tribunals. There were tribunals before 2012 and they exist now, not
6 only in Mali but in other countries. They are a sort of traditional tribunals and not
7 official tribunals.
- 8 Q. [11:50:45] So did this [REDACTED] resemble a traditional tribunal?
- 9 A. [11:50:59] It does. Another observation I may give, Tuaregs and Arabs to this
10 day still feel a shame to go to a regular court in their cases. If there is a problem
11 between two persons they would go to the religious sheikh or religious judge to rule
12 on the matter and not to a court.
- 13 Q. [11:51:27] Now if we could turn to tab 10 on the Prosecution's list or binder, this
14 is the Arabic version, it's MLI-OTP-0020-0117 at 0118. And tab 11 is the English,
15 MLI-OTP-0078-9744 at 9747.
- 16 A. [11:52:42] Can you please tell me the tab of the Arabic version.
- 17 Q. [11:52:47] It's on the Prosecution's binder, I believe it's tab 10.
- 18 A. [11:53:05] Yes.
- 19 Q. [11:53:07] And if you could turn to page 9747 -- sorry, 0118.
- 20 A. [11:53:27] I don't think I'm on the right page. This is not in tab 10. What I
21 have in tab 10 is a Facebook post, that's what I have in tab 10.
- 22 Q. [11:53:39] I think you're looking at the Defence binder rather than
23 the Prosecution binder.
- 24 A. [11:53:47] Yes, indeed. Yes.
- 25 Q. [11:54:11] Are you able to find tab 10?

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-40/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 A. [11:54:21] Yes.
- 2 Q. [11:54:26] [REDACTED]
- 3 [REDACTED]?
- 4 A. [11:54:40] It is.
- 5 Q. [11:54:43] Now if we could turn to page 9747 in the English, and page 0118 in
- 6 the Arabic.
- 7 A. [11:55:15] Yes.
- 8 Q. [11:55:17] [REDACTED]
- 9 [REDACTED]?
- 10 A. [11:55:31] [REDACTED]
- 11 Q. [11:55:33] [REDACTED]
- 12 [REDACTED]?
- 13 A. [11:55:44] [REDACTED]
- 14 Q. [11:55:47] And at number 2 it says:
- 15 "Many cases pending for several years whose legal merits require further examination,
- 16 in particular those cases relating to disputes between urban dwellers and desert
- 17 communities over grazing land, farms and property."
- 18 Now, this reference to cases pending for several years, is that consistent with what
- 19 you saw and heard in Timbuktu?
- 20 PRESIDING JUDGE MINDUA: [11:56:37](Interpretation) Mr Al Hassan?
- 21 Courtroom officer, do you hear what he's saying? I can't hear anything.
- 22 THE COURT OFFICER: [11:56:54] Mr Al Hassan, could you please turn on your
- 23 microphone.
- 24 (Interpretation) Could you turn on your microphone, please, if you'd like to address
- 25 the Bench.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-41/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 Mr Al Hassan, if you could please repeat, your microphone is now on.
- 2 MR AL HASSAN: [11:57:52](Interpretation) I can hear the interpretation, but
- 3 I cannot hear the witness speaking.
- 4 PRESIDING JUDGE MINDUA: [11:58:10](Interpretation) Courtroom officer, could
- 5 you please check that.
- 6 THE COURT OFFICER: [11:58:14](Interpretation) Mr Witness, could you just test
- 7 the microphone, please, say something into the microphone.
- 8 THE WITNESS: [11:58:50](Interpretation) Yes.
- 9 PRESIDING JUDGE MINDUA: [11:58:59](Interpretation) There you have it, once
- 10 again everything back to normal.
- 11 Ms Taylor.
- 12 MS TAYLOR: [11:59:09] I think the microphone at the other end is going to have to
- 13 be turned off.
- 14 THE COURT OFFICER: [11:59:16](Interpretation) Mr Al Hassan, could you now
- 15 turn off your microphone.
- 16 PRESIDING JUDGE MINDUA: [11:59:41](Interpretation) Fine.
- 17 Ms Taylor, please resume.
- 18 MS TAYLOR: [11:59:47]
- 19 Q. [11:59:49] So, Mr Witness, I read out [REDACTED] point 2 where it said:
- 20 "Many cases were pending for several years whose legal merits require further
- 21 examination, in particular those cases relating to disputes between urban dwellers
- 22 and desert communities over grazing land, farms and property."
- 23 Now, Mr Witness, based on what you yourself saw and heard in Timbuktu, is this
- 24 consistent with what you saw and heard in terms of there being a lot of cases that
- 25 hadn't been resolved regarding grazing issues and property disputes?

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-42/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 A. [12:00:38] Yes.

2 Q. [12:00:40] And if we could turn to page 9748, that's -- for the Arabic it would be
3 0119. [REDACTED] the question:

4 "Did you ever work in the judiciary under the Malian government? What's your
5 assessment of the status of justice in the two periods?"

6 And a response to that, it says:

7 "During the Malian government era, the law consisted of a set of laws imposed by
8 humankind, derived from a secular, non-religious system, which formed the
9 country's constitution and its legal reference. Therefore, Muslim judges obviously
10 cannot participate in it, are exempt from it and oppose it. However, given the social
11 and tribal composition of the people in the region, which was adverse to statutory
12 court proceedings, the State used to recognise the people's customs and traditions and
13 overlook instances of when they resorted to their own scholars to adjudicate among
14 them. Accordingly, some people used to refer to us for the issuance of fatwas,
15 judgments and compensation and we would undertake these on a voluntary basis
16 and as a religiously ordained duty."

17 A. [12:02:41] I cannot hear anything.

18 THE COURT OFFICER: [12:03:21] Message to the Arabic booth, everything is fixed?

19 Thank you.

20 PRESIDING JUDGE MINDUA: [12:03:40](Interpretation) Yes, everything seems to
21 be working swimmingly again and we can continue.

22 Ms Taylor.

23 MS TAYLOR: [12:03:51]

24 Q. [12:03:52] Mr Witness, have you heard the interpretation?

25 A. [12:04:00] It was incomplete, but if you can point to the exact paragraph, I can

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-43/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 read it out myself. It's in Arabic and I don't need any interpretation for that.
- 2 Q. [12:04:14] Yes, it's the first paragraph starting with "During the Malian
3 government era" and then the last sentence of the paragraph is "Accordingly, some
4 people used to refer to us for the issuance of fatwas, judgments and compensation ..."
- 5 A. [12:05:07] Yes.
- 6 Q. [12:05:09] Mr Witness, is this consistent with what you yourself saw and heard
7 in Timbuktu before 2012, that people in Timbuktu would sometimes refer such
8 matters to religious judges?
- 9 A. [12:05:29] That is the case until now.
- 10 Q. [12:05:35] Now, it's correct that Houka Houka worked from the *Hotel Maison*?
- 11 A. [12:05:46] That's true.
- 12 Q. [12:05:51] And if he worked from the *Hotel Maison*, he wouldn't have gone to
13 the BMS, would he, to issue judgments and orders?
- 14 A. [12:06:11] I do not know exactly the implementation mechanism, but I know that
15 it was a simple one.
- 16 Q. [12:06:26] To your knowledge, Mr Witness, would Houka Houka have detained
17 people at his house?
- 18 A. [12:06:38] I do not know so.
- 19 MS TAYLOR: [12:06:47] Now, perhaps we can go into public session.
- 20 PRESIDING JUDGE MINDUA: [12:06:59](Interpretation) Open session, please,
21 madam courtroom officer.
- 22 (Open session at 12.07 p.m.)
- 23 THE COURT OFFICER: [12:07:09] We are back in open session, Mr President.
- 24 PRESIDING JUDGE MINDUA: [12:07:18](Interpretation) Thank you very much.
- 25 Ms Taylor.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-44/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 MS TAYLOR: [12:07:23]

2 Q. [12:07:24] Now, last week at transcript 43, page 5, lines 1 to 3, you stated that
3 under Mohamed Moussa, the dress code became more of a mandatory thing rather
4 than an invitation. And you also stated that he was the emir of *Hesbah* towards
5 the end.

6 Now, Mr Witness, would it be correct that Al Mahdi had a more lenient approach
7 when he was the emir of *Hesbah*?

8 A. [12:08:13] The question needs to be rephrased, it's not clear enough.

9 Q. [12:08:21] In terms of the rules concerning the implementation of the dress code,
10 would it be correct that when Al Mahdi was the emir of *Hesbah*, he had a more lenient
11 approach, less strict approach?

12 A. [12:08:42] Certainly.

13 Q. [12:08:46] And was it also correct that the leaders in Timbuktu prefer
14 the approach of Al Mahdi?

15 A. [12:09:02] Not only the judges, but most of the actual leaders of the city, those
16 who wanted to sway people and gain their love.

17 Q. [12:09:26] And it's correct that Mohamed Moussa was replaced by a Chadian
18 emir?

19 A. [12:09:35] Yes.

20 Q. [12:09:42] Now, Mr Witness, if I can refer you to tab 240 on the Defence binder,
21 that's MLI-OTP-0061-1512. If you could turn to page 1529, paragraph 73.

22 And for the English, that's tab 16 on the Prosecution's list, MLI-OTP-0024-3096,
23 page 3110, paragraph 73.

24 A. [12:10:31] The paragraph, please?

25 Q. [12:10:35] Seventy-three.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 MS TAYLOR: [12:10:37] And to read this out, I believe we'll have to go into private
2 session, Mr President.

3 PRESIDING JUDGE MINDUA: [12:10:51](Interpretation) Yes, that is correct,
4 Ms Taylor.

5 Private session, please, courtroom officer.

6 (Private session at 12.10 p.m.)

7 THE COURT OFFICER: [12:11:02] We are in private session, Mr President.

8 PRESIDING JUDGE MINDUA: [12:11:12](Interpretation) Thank you very much.
9 Ms Taylor.

10 MS TAYLOR: [12:11:15]

11 Q. [12:11:16] The paragraph states:

12 "However, [REDACTED] the armed groups [REDACTED] I did not
13 understand them very well. When I first arrived in Tombouctou after the start of the
14 occupation, I do not think that the different institutions even existed and later on, I
15 thought that the activities of the Hesbah were the same as those of the Islamic Police.
16 Only later on, I understood that the activities of the Hesbah fell under the Hesbah
17 only. [REDACTED] Abou Tourab [REDACTED]

18 [REDACTED] I am not sure that I knew that he was in charge of the Hesbah."

19 A. [12:12:13] Yes.

20 Q. [12:12:14] So, Mr Witness, is it correct that at the beginning you thought that
21 the *Hesbah* activities were the same as the Islamic police, and it was only later on that
22 you realised that the activities of *Hesbah* fell under *Hesbah* only?

23 A. [12:12:34] Yes.

24 Q. [12:12:38] Now, Mr Witness, if you had confusion between the two, would it be
25 correct that other people also had difficulties understanding the difference between

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-46/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 the two?

2 A. [12:12:53] I think so.

3 PRESIDING JUDGE MINDUA: [12:12:57](Overlapping speakers)

4 MR DUTERTRE: [12:12:57](Interpretation) I would say that this is very speculative.

5 We are asking the witness to say what other people might have thought. And who
6 are those others? It's very general and speculative.

7 PRESIDING JUDGE MINDUA: [12:13:12](Interpretation) Yes, I do agree.

8 Ms Taylor, you are requesting that the witness speculate. That is not all right.

9 MS TAYLOR:

10 Q. [12:13:26] Mr Witness, is it correct that both the Islamic police and *Hesbah* wore
11 blue vests at a certain point?

12 A. [12:13:42] In the beginning there were no vests, but later on we noticed
13 the Islamic police vests and, at the end, we noticed also the *Hesbah* vests.

14 Q. [12:13:58] [REDACTED]
15 [REDACTED] ?

16 A. [12:14:16] [REDACTED]

17 Q. [12:14:18] I'm just going to play a video, it's tab 34 in the Prosecution list,

18 [REDACTED] And the transcript is tab 35 on the Prosecution's list,

19 MLI-OTP-0028-0839. And we're just going to play it from the [REDACTED]

20 we're just going to show it at the [REDACTED]

21 (Viewing of the video excerpt)

22 MS TAYLOR: [12:15:40]

23 Q. [12:15:40] Is this the vest [REDACTED] Mr Witness?

24 A. [12:15:47] It is.

25 Q. [12:15:50] And it's correct that it says "*Hesbah*" in Arabic but not French?

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-47/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 A. [12:15:59] It does.

2 Q. [12:16:03] [REDACTED]

3 [REDACTED]?

4 A. [12:16:12] [REDACTED]

5 Q. [12:16:14] So I'd like to play the same section from 3:29 until 3:40 with sound.

6 (Viewing of the video excerpt)

7 MR DUTERTRE: [12:17:10](Interpretation) There is no sound whatsoever.

8 PRESIDING JUDGE MINDUA: [12:17:14](Interpretation) Madam courtroom officer,
9 there is no sound.

10 (Viewing of the video excerpt)

11 THE INTERPRETER: [12:17:34] (Interpretation of the video excerpt) Abou Tourab
12 headed up the Islamic police and he is recognisable by this blue uniform on which
13 a sabre and a Kalashnikov intercross. The cameraman was able to follow his work,
14 his daily work, a work that was sometimes violent in eradication forms and his
15 behaviour -- work that was sometimes violent in that it eradicated some types of
16 behaviour that were deemed to be contrary to their concept of Islam.

17 PRESIDING JUDGE MINDUA: [12:18:31](Interpretation) Madam courtroom officer,
18 we don't know what's going on. What's -- it seems to be blocked. What's
19 happening?

20 THE COURT OFFICER: [12:18:37] The interpretation in other languages is still going
21 on, Mr President.

22 MS TAYLOR: [12:18:45]

23 Q. [12:18:46] Now, Mr Witness, it's correct, isn't it, that even though Abou Tourab
24 was wearing a vest that said "*Hesbah*" in Arabic, the voice-over claimed that he
25 directed the Islamic police?

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 A. [12:19:07] Yes. [REDACTED]
2 [REDACTED] the term "Islamic police" is more, is easier to use. So sometimes even members of
3 the *Hesbah* or the Islamic police would both identify as members of the Islamic police.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Q. [12:20:06] So if it was [REDACTED], is it
10 correct that [REDACTED] also confused *Hesbah* and Islamic police?

11 A. [12:20:25] Certainly. [REDACTED] They
12 just use the term "Islamic police", even if they're referring to something that doesn't
13 belong to the Islamic police.

14 Q. [12:20:45] And it's correct, isn't it, the *Hesbah* moved into offices that had
15 previously been occupied by the Islamic police?

16 A. [12:20:57] Yes.

17 Q. [12:21:00] So would that also have contributed to confusion?

18 A. [12:21:12] I do not think that's -- I do not think that's a consequence of that,
19 because the change happened at the end of the Islamist's control of the city.

20 Q. [12:21:31] Now, Mr Witness, can I refer you to tab 239 of the Defence list, that's
21 MLI-OTP-0068-3201. If we could turn to page 3229, paragraph 142, this is tab 1 on
22 the Prosecution's list, MLI-OTP-0020-0019 at 0048, paragraph 142.

23 A. [12:22:20] Yes.

24 Q. [12:22:23] And I have to read out the entire paragraph, it states:

25 "The Islamic Police had a prison, which was in the beginning -- which in the

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 beginning was in the same building as the Police and was later moved to the old city
2 prison. There was a separate manager for the prison. I do not know the strength of
3 the Islamic Police in terms of numbers of men or vehicles. There were 2 or 3 cars
4 used by the Police and a few motorcycles but if the Police needed more cars, they
5 would be assigned to the Police from the military or the other bodies. In general in
6 Al Qaeda in Tombouctou, there was no personal ownership but the assets could be
7 rotated from one entity to the other. The head of the Police was first Adam, who
8 was later replaced by Khalid. The Police also had a manager who carried out
9 administrative functions: Hassan AL ANSARI. The manager always had to go to
10 the head for decisions but I do not have a specific example of that."

11 A. [12:23:52] I read the paragraph, yes.

12 Q. [12:24:01] So, Mr Witness, is it correct that in general in Al-Qaeda in Timbuktu,
13 there was no personal ownership but assets could be rotated from one entity to
14 the other?

15 A. [12:24:29] Yes, when it comes to vehicles that belonged to the organisation, yes.

16 Q. [12:24:35] So a car could be used by the Islamic police on one day and another
17 day by *Hesbah*?

18 A. [12:24:45] Yes.

19 Q. [12:24:56] Now, Mr Witness, last Tuesday, at transcript 44, page 9, lines 17 to 18,
20 in response to a question from the Legal Representatives of Victims, you mention that
21 members of the civil service left Timbuktu in 2012. Some left before the groups
22 arrived, and some afterwards.

23 Now, Mr Witness, at the time that Ansar Dine arrived in 2012, was there any
24 functioning police present in Timbuktu?

25 A. [12:25:38] No. When the army left, all the police, the gendarmerie, they had

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-50/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 already left before the army's departure, as far as I think.

2 Q. [12:26:01] And last Wednesday at transcript 45, page 14, lines 15 to 17, you
3 testified that [REDACTED], under the MNLA and the Arab
4 groups, there was a situation of pillaging crimes and chaos in Timbuktu.

5 You also testified that after Ansar Dine left in 2013, the light-skinned Tuaregs and
6 Arabs were the victims of vandalism and crimes and the Malian authorities did
7 nothing to stop these crimes.

8 So, Mr Witness, would it be fair to say that the establishment of the Islamic police
9 made a positive contribution in 2012, by protecting locals against pillaging and
10 the type of crimes that occurred in early 2013 and early 2013 -- sorry, early 2012 and
11 early 2013?

12 A. [12:27:18] Yes.

13 Q. [12:27:21] And did the presence of the Islamic police mean that shop owners
14 could open their shops and sell goods?

15 A. [12:27:40] The question is not clear. Can you please rephrase it.

16 PRESIDING JUDGE MINDUA: [12:27:48](Interpretation) Ms Taylor, are we staying
17 in private session? I think it is time for to us go into public.

18 MS TAYLOR: [12:27:55] We can go into public session, although then I will show
19 a video, but it might be that it will be time for the break.

20 PRESIDING JUDGE MINDUA: [12:28:09](Interpretation) Open session, please,
21 madam courtroom officer.

22 (Open session at 12.28 p.m.)

23 THE COURT OFFICER: [12:28:26] We are in open session, Mr President.

24 PRESIDING JUDGE MINDUA: [12:28:28](Interpretation) Thank you very much.
25 Ms Taylor.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-51/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 MS TAYLOR: [12:28:31]

2 Q. [12:28:32] Mr Witness, did the fact that there was no pillaging or the same type
3 of crimes, that these crimes were not happening when Ansar Dine was there, did that
4 make it easier for the shop owners to open their shops and sell their goods?

5 A. [12:28:58] Certainly.

6 MS TAYLOR: [12:29:04] I have a video to play so this might be a good time for
7 the break.

8 PRESIDING JUDGE MINDUA: [12:29:18](Interpretation) Indeed, Ms Taylor, we
9 shall rise now for the luncheon break and we shall take a break of one hour. It is half
10 past 12 now, we shall reconvene at half past 1. At half past 1.
11 Court is suspended.

12 THE COURT USHER: [12:29:42] All rise.
13 (Recess taken at 12.29 p.m.)
14 (Upon resuming in open session at 1.33 p.m.)

15 THE COURT USHER: [13:33:08] All rise.
16 Please be seated.

17 PRESIDING JUDGE MINDUA: [13:33:35](Interpretation) The Court is in session.
18 We will continue with the Defence's cross-examination.
19 Ms Taylor, you have the floor.

20 MS TAYLOR: [13:33:49] Mr President, I'm about to show a video to the witness, so
21 with your authorisation may we show it in private session?

22 PRESIDING JUDGE MINDUA: [13:34:03](Interpretation) Court officer, private
23 session, please.

24 (Private session at 1.34 p.m.)

25 THE COURT OFFICER: [13:34:12] We are in private session, Mr President.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-52/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 PRESIDING JUDGE MINDUA: [13:34:19](Interpretation) Thank you very much.
- 2 Ms Taylor.
- 3 MS TAYLOR: [13:34:25]
- 4 Q. [13:34:25] Mr Witness, on the second day of your testimony, transcript 38,
- 5 page 54, do you recall the Prosecution showing a video of an Islamic police security
- 6 point at the market?
- 7 A. [13:34:46] (No interpretation)
- 8 Q. [13:34:49] I'm just going to play that video without sound.
- 9 MLI-OTP-0018-0483. It will be played from evidence 2.
- 10 THE COURT OFFICER: [13:35:12] Message to the Arabic booth: thank you for
- 11 turning off your microphone.
- 12 (Viewing of the video excerpt)
- 13 MS TAYLOR: [13:36:09]
- 14 Q. [13:36:09] Mr Witness, would it be correct that the purpose of the security point
- 15 of the Islamic police was to ensure the security of the market?
- 16 A. [13:36:28] That's possible.
- 17 Q. [13:36:32] And it's correct that in this video we could see women walking to
- 18 the market?
- 19 A. [13:36:43] (No interpretation)
- 20 Q. [13:36:43] And the shopkeepers were able to sell their goods.
- 21 A. [13:36:51] (No interpretation)
- 22 MS TAYLOR: [13:37:01] We didn't get interpretation for the last two answers in
- 23 the English transcript.
- 24 THE INTERPRETER: [13:37:07] The answer was "Certainly". And that was
- 25 the reply from the witness.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 MS TAYLOR: [13:37:14] And for the earlier, page 65, line 6, are the interpreters able
2 to provide that response?

3 PRESIDING JUDGE MINDUA: [13:37:32](Interpretation) There is no reply in
4 the transcript because the interpreters are saying that there is no break between
5 the question and the answer. We need a greater break in order to allow
6 the interpreters to work. So, please let us stick to the usual breaks.
7 Please proceed.

8 MS TAYLOR: [13:38:02] Thank you, Mr President.

9 Q. If I can go back then, I asked a question: It's correct that in the video we could
10 see women walking to the market?

11 A. [13:38:26] Yes.

12 Q. [13:38:28] And it's correct the shopkeepers were able to sell their goods?

13 A. [13:38:38] Yes.

14 Q. [13:38:41] And was their ability to do so helped by the fact that there was
15 security?

16 A. [13:38:52] Yes.

17 Q. [13:38:56] Now, transcript 38, page 48, line 14, you testified that usually
18 the patrols carried out by the Islamic police were for security purposes. By "security
19 purposes", do you mean providing security to the locals?

20 A. [13:39:23] (No interpretation)

21 Q. [13:39:24] So they were acting like (Overlapping speakers)

22 A. [13:39:25] Yes.

23 Q. [13:39:28] So they would be acting like a regular police force?

24 A. [13:39:36] Yes.

25 Q. [13:39:40] Now, Mr Witness, can I turn you to tab 245 on the Defence list, it's

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 the Arabic, it's MLI-OTP-0063-0436. The English is tab 275, it's MLI-OTP-0062-3324

2 at page 3325 on the OTP list, and I'll read out the paragraph in full:

3 "[REDACTED] asked P-0065 [REDACTED]

4 members of the Islamic Police in Tombouctou during 2012, or about the actions of

5 the Islamic Police. [REDACTED]

6 [REDACTED] In his view,

7 the Islamic Police did not have a lot of authority, and its members were not

8 the 'decision-makers'. [REDACTED]

9 [REDACTED]

10 [REDACTED] the Islamic Police [REDACTED]

11 they burned cigarettes. He said that [REDACTED]

12 [REDACTED] the Islamic Police was

13 not involved in 'important events' [REDACTED] In his view, the Police was

14 executing orders."

15 A. [13:42:24] Yes, I didn't hear any question in that.

16 Q. [13:42:33] I was waiting for you to receive the interpretation.

17 Mr Witness, is it correct that in August 2018, you told investigators that [REDACTED]

18 [REDACTED] the Islamic police did not have a lot of

19 authority and its members were not decision makers?

20 A. [13:42:56] Yes.

21 Q. [13:43:00] And if I could turn you to tab 222 on the Defence list, that's

22 MLI-OTP-0070-0922, and I'll read out the relevant -- this is in the Defence binder, it's

23 tab 222.

24 A. [13:44:10] (No interpretation)

25 Q. [13:44:10] It says that:

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 "P-0065 said that in his view the Islamic police did not have a lot of authority, and its
2 members were not the decision makers.

3 P-0065 further said that in his view, the Islamic police was executing orders."

4 Mr Witness, is this what you told the Prosecution [REDACTED]?

5 A. [13:44:47] Yes. This corresponds to what I said. But I don't know whether
6 this is what I said to the investigators.

7 Q. [13:45:08] Mr Witness, does it correspond to what you saw and heard in
8 Timbuktu in 2012?

9 A. [13:45:27] Yes.

10 Q. [13:45:28] Mr Witness, is it correct that when Ansar Dine first arrived, there was
11 no separate Islamic police and that all security and police issues were under Talha's
12 command?

13 A. [13:45:53] When they arrived, I don't know it was under the command of Talha,
14 but they were -- the Islamic police was created after their arrival there. That I can
15 indeed confirm.

16 Q. [13:46:10] Can I refer you to tab 223 in the Defence binder, that's
17 MLI-OTP-0018-0928, that's the Arabic, and the English is 224 in the Defence binder,
18 that's MLI-OTP-0049-0040.

19 A. [13:46:59] Yes.

20 Q. [13:47:02] [REDACTED]?

21 A. [13:47:08] [REDACTED]

22 Q. [13:47:11] [REDACTED]?

23 A. [13:47:17] [REDACTED]

24 Q. [13:47:24] [REDACTED]?

25 A. [13:47:33] [REDACTED]

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 [REDACTED]
- 2 Q. [13:47:51] Now, [REDACTED] it states at the beginning the group had
- 3 started by explaining the principle of Sharia, and then some time after their arrival
- 4 they had arrested persons who had drunk alcohol. And after that, they had set up
- 5 the Islamic police and the Islamic tribunal.
- 6 Is that consistent with what you heard at the time?
- 7 A. [13:48:22] Yes.
- 8 Q. [13:48:23] And this would suggest that the Islamic police was set up a bit
- 9 afterwards?
- 10 A. [13:48:35] I don't know when exactly it was created, [REDACTED]
- 11 [REDACTED] the Islamic police sometime after their arrival
- 12 in Timbuktu.
- 13 Q. [13:48:59] Do you recall how long Talha was in charge of these types of policing
- 14 issues?
- 15 A. [13:49:12] I don't remember that at the moment, I don't recall.
- 16 Q. [13:49:21] [REDACTED]
- 17 [REDACTED]?
- 18 A. [13:49:39] No, I don't remember that either at the moment. I know that there
- 19 were disagreements, but I can't give you any example. I don't know what nature
- 20 these disagreements had.
- 21 Q. [13:50:04] Now, after Adama became head of the Islamic police, is it correct that
- 22 Talha stayed in charge of security issues and soldiers?
- 23 A. [13:50:20] Yes.
- 24 Q. [13:50:28] [REDACTED]
- 25 [REDACTED] refers to the June flogging and says that Talha arrived and was responsible for

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-57/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 ensuring security at the event.

2 In the French it's at page 0042 and it's the second last paragraph on the page.

3 A. [13:51:35] Yes.

4 Q. [13:51:37] Is this consistent with what you saw at the time?

5 A. [13:51:53] Could you please repeat the question independently of the text.

6 PRESIDING JUDGE MINDUA: [13:52:03](Interpretation) Prosecutor.

7 MR DUTERTRE: [13:52:06](Interpretation) Could Ms Taylor please give the number

8 of the paragraph on the page 0042 because I can't find the reference. And could she

9 also give the witness time to read it.

10 MS TAYLOR: [13:52:23] I think I did give it earlier, I said it was the second last

11 paragraph on the page. And the page I'm referring to is page 0042 in the French.

12 And it starts with referring to a medical team arriving and then it refers to afterwards,

13 "then the responsible for security, Talha, in company of many soldiers ..."

14 Q. Mr Witness, do you have that paragraph before you?

15 A. [13:52:59] No, I don't have this paragraph in front of me. But that does

16 correspond to what I can recall, listening to what you say independently of the

17 paragraph.

18 Q. [13:53:15] And at transcript 41, page 5, line 21 you testified that Talha would

19 oversee all events. So is it correct that it was the role of Talha, his security section,

20 and the Islamic soldiers to provide security at these public floggings?

21 A. [13:53:45] I think yes, that's true.

22 Q. [13:53:53] Now, if I could turn you to tab 239 on the Defence list, that's

23 MLI-OTP-0068-3201 at 3230, paragraph 144. And the English is MLI-OTP-0020-0019

24 at 0048, paragraph 144.

25 PRESIDING JUDGE MINDUA: [13:55:11](Interpretation) Prosecutor.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-58/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 MR DUTERTRE: [13:55:14](Interpretation) With regard to Talha, Ms Taylor
2 mentioned a reference to the transcript 41, page 5, line 21, but I can't find exactly
3 the wording that she found in the lines quoted. Maybe there must be
4 another -- maybe there's another reference which could be given.
5 PRESIDING JUDGE MINDUA: [13:55:45](Interpretation) Ms Taylor, please.
6 MS TAYLOR: [13:55:48] I can check the reference after the break.
7 Q. [13:55:53] But, Mr Witness, is it correct that Talha would oversee all events?
8 A. [13:56:10] I *wouldn't say all events, but the major ones. For example, the first
9 flogging, or the first **Qisas*, retaliatory punishment, it was Talha who oversaw
10 securing the environment to execute the punishment, but I can't say that he
11 supervised all the events.
12 MS TAYLOR: [13:56:45] For the record, my reference was correct, Mr Dutertre, it's
13 a reference to the English.
14 Q. [13:56:58] Now, Mr Witness, after the police was set up, Adam was the first
15 head, and is it correct that if you went to the police office, you would find him there?
16 A. [13:57:13] Yes, [REDACTED] But
17 I don't remember all the details.
18 Q. [13:57:28] [REDACTED]
19 [REDACTED]
20 A. [13:57:39] [REDACTED]
21 Q. [13:57:47] And roughly what date was that?
22 A. [13:58:03] [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-59/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 Q. [13:58:37] Now, Mr Witness, before the break I read out paragraph 142 of your
2 statement.

3 MS TAYLOR: Mr President, do I need to read out the entire paragraph again? It's
4 the paragraph I read out before the break.

5 PRESIDING JUDGE MINDUA: [13:58:58](Microphone not activated) (Interpretation)
6 Since you have said it was paragraph 142 and it's been read before, then there is no
7 need to reread it. Please proceed.

8 MS TAYLOR: [13:59:13]

9 Q. [13:59:13] Now, Mr Witness, if I can refer you to tab 239 on the Defence list,
10 that's MLI-OTP-0068-3201, the page is 3229 and the paragraph is 142. The English is
11 tab 1 in the Prosecution's binder, MLI-OTP-0020-0019 at 0048, paragraph 142.

12 A. [14:00:04] Yes.

13 Q. [14:00:06] Mr Witness, is it correct that in your first interview with
14 the Prosecution you described Mr Al Hassan as someone who carried out
15 administrative functions in the Islamic police?

16 A. [14:00:27] Yes.

17 Q. [14:00:29] And is that consistent with what you saw and heard in 2012?

18 A. [14:00:42] Yes. Al Hassan carried out administrative functions within
19 the Islamic police. But we also saw him in the field during the execution of sanctions,
20 the enforcement of sanctions.

21 Q. [14:01:05] [REDACTED] did Adam generally cover
22 his face?

23 A. [14:01:21] Adam covered his face only [REDACTED] For security
24 reasons, [REDACTED]

25 [REDACTED]

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-60/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 [REDACTED]

2 Q. [14:01:44] And is it correct that Al Hassan didn't cover his face [REDACTED]

3 [REDACTED]?

4 A. [14:01:58] Not at all, he didn't cover his face [REDACTED]

5 [REDACTED]

6 Q. [14:02:12] [REDACTED]?

7 A. [14:02:19] [REDACTED]

8 Q. [14:02:33] Now you testified at transcript 40, page 55, lines 14, that

9 Mr Al Hassan might have been [REDACTED]

10 [REDACTED]?

11 A. [14:02:54] Yes, he spoke Arabic well, and French, unlike all the other members of
12 the Islamic police.

13 Q. [14:03:10] [REDACTED]?

14 A. [14:03:23] [REDACTED]

15 [REDACTED]

16 Q. [14:03:35] [REDACTED]

17 [REDACTED]?

18 A. [14:03:48] I don't know. I don't know the internal working -- their internal
19 workings.

20 Q. [14:04:00] Do you recall in transcript 42, page 43, lines 7 to 22 explaining that

21 you had thought that Al Hassan was Adama [REDACTED]

22 [REDACTED]?

23 A. [14:04:24] I don't remember that at the moment.

24 Q. [14:04:28] Very well, we can come back to that.

25 [REDACTED]

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-61/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 [REDACTED] ?

2 A. [14:04:50] [REDACTED]

3 [REDACTED]

4 Q. [14:05:10] Now, is it correct that the groups would use locals like Al Hassan [REDACTED]

5 [REDACTED] because [REDACTED]

6 [REDACTED] they wouldn't be able to go

7 on missions or do anything [REDACTED] ?

8 A. [14:05:41] No. [REDACTED]

9 [REDACTED] Al-Qaeda. As to them, the reason they brought the

10 locals on at some point was to give the world the illusion that this was not Al-Qaeda

11 but a national group which had national revolutionary objectives and that it was them

12 who carried out the acts. That was the message that was passed [REDACTED]

13 [REDACTED]

14 Q. [14:06:31] Mr Witness, can I turn you to tab 240 on the Defence list, it's

15 MLI-OTP-0061-1512, it's page 1519 to 1520, paragraph 31. And the English is

16 MLI-OTP-0024-3096, the relevant page being 3102, paragraph 31.

17 And I'll read out the paragraph on the record.

18 "[REDACTED]

19 [REDACTED] I knew [that] they were going to choose someone local

20 who spoke well, such as Abou Tourab. The leaders trusted him but also, they knew

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 [REDACTED] Abou Tourab was already

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-62/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 publicly known."

2 Do you recall saying this to the Prosecution?

3 A. [14:08:35] Yes. [REDACTED]

4 [REDACTED]

5 Q. [14:08:51] Yes. Thank you, Mr Witness.

6 A. [14:08:59] [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] Al-Qaeda, [REDACTED]

10 [REDACTED] whose photo was published

11 would be recognised by the intelligence services so they could no longer carry out

12 missions and they would be arrested. So [REDACTED] they could no

13 longer be sent on mission abroad to other countries.

14 Q. [14:09:57] And, Mr Witness, you said that because of this factor they would

15 choose locals [REDACTED]?

16 A. [14:10:11] Yes, that's one of the factor. But there's another factor as well,

17 namely working under the cover of local Ansar Dine. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 But the locals who had no motivation to carry out terrorist operations outside

22 the borders, they had no problem in [REDACTED] being known. So they didn't

23 have to hide themselves or cover their faces, they thought they would have no

24 problem with the intelligence services abroad. [REDACTED]

25 [REDACTED]

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 Q. [14:11:20] Now, Mr Witness, at transcript 37, page 26, lines 13 to 21 you refer to
2 someone called Abou Thar and you testified that he was a member of Al-Qaeda and
3 that sometimes he was with the Islamic police and then sometimes he was with
4 *Hesbah*.

5 Now, Mr Witness, is it correct that Abou Thar was also involved in the more global
6 projects and the general scope of the objectives of Al-Qaeda?

7 A. [14:12:04] Of course.

8 Q. [14:12:09] And is it also correct that within the general scope of the objectives of
9 Al-Qaeda someone like Abou Thar has more influence than Al Hassan?

10 A. [14:12:24] Yes, according to the criteria known at the time, and in this area in
11 particular, that is true. Bearing in mind that I didn't work with the Islamic police
12 and I don't know how it goes within there, [REDACTED]

13 [REDACTED]
14 [REDACTED]

15 Q. [14:13:11] So [REDACTED] if Abou Thar was
16 involved in these Al-Qaeda objectives, would that mean that he could pursue those
17 objectives independently of Al Hassan?

18 A. [14:13:34] Yes.

19 Q. [14:13:38] Whereas someone like Al Hassan would have had to have gone to
20 Adama or Khalid for decisions; that's correct?

21 A. [14:13:53] Yes. And even Abou Thar, within the Islamic police, he had to refer
22 to Khalid or Adam, Adama, because the question of the emir is something that's
23 sacred and you cannot bypass the emir in your actions.

24 Q. [14:14:22] Do you recall describing Al Hassan as being from Ansar Dine and
25 having more national projects?

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-64/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 A. [14:14:37] Yes, [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 Q. [14:15:05] Now on 6 November, that's transcript 42, page 48, you stated there
5 were two different approaches in Ansar Dine, one which defended the jihadist project
6 and the other, [REDACTED] who were defending a national project.
7 This national project, would this be a means to establish order, services and safety in
8 the region?
9 A. [14:15:38] Yes, indeed. Certainly.
10 Q. [14:15:46] And when you described Mr Al Hassan as having national projects, is
11 this what you mean?
12 A. [14:15:58] Yes. [REDACTED]
13 [REDACTED]
14 [REDACTED] Al Hassan is someone with
15 a national project.
16 But the difference between him [REDACTED] and the group that was in Niafunké,
17 is that they were part of MNLA and were forced to either leave their land or proclaim
18 adherence to Ansar Dine. But in Niafunké, they were not subject to an Al-Qaeda
19 leadership, they were self-governed, and so they did not enforce *huhud*, [REDACTED]
20 [REDACTED] And so they were members of
21 Ansar Dine but only in name.
22 *As to Al Hassan, he was in Timbuktu, under Al-Qaeda's leadership, so even if he had
23 different ideas and objectives, he wasn't free, he couldn't depart from the system that
24 was in force in the city.
25 Q. [14:17:27] Now, Mr Witness, last Monday, that's transcript 38, page 18, you

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-65/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 mentioned [REDACTED]
2 [REDACTED]
3 [REDACTED] ?
4 A. [14:17:59] [REDACTED]
5 [REDACTED]
6 Q. [14:18:21] Now, Mr Witness, you've mentioned individuals moving from one
7 organ to another. Were you aware that after Adama left the Islamic police, several
8 members of the Islamic police joined *Hesbah*?
9 A. [14:18:40] I don't know. I don't know how all these functions overlap.
10 Q. [14:19:00] Now at transcript 41 you testified in relation to the execution of
11 Mohamed Moussa. He was a Tuareg member of Ansar Dine; that's correct?
12 A. [14:19:19] Yes, [REDACTED] he was a member
13 of Ansar Dine à *Derheï* (phon) and he surrendered when he had killed a person who
14 had asked for his cows, because he had taken his cows and afterwards he surrendered
15 and he asked the members of Ansar Dine to punish him. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 Q. [14:20:05] Were you aware that his family were in Goundam and did not attend
19 the trial or the sentence?
20 A. [14:20:23] Currently I don't remember that. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 Q. [14:20:56] Now, the Prosecution showed a video where you could -- you
25 identified Al Hassan being next to Mr Moussa before he prayed. Now it's correct

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-66/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 that Al Hassan was a Tuareg like him and a member of his community?

2 A. [14:21:20] Yes.

3 Q. [14:21:26] And last Thursday you testified that the Ansar Dine had offered
4 the mother of the victim 30 million CFA to pardon him and stop the execution. And
5 do you recall telling the Prosecution that on the day of the execution Ansar Dine
6 brought Moussa to the mother to see again if she would pardon him?

7 A. [14:22:01] The day of the execution, Moussa's mother came to see how
8 the person who had executed her son would be executed.

9 PRESIDING JUDGE MINDUA: [14:22:19](Interpretation) Ms Taylor, we're still in
10 private session.

11 MS TAYLOR: [14:22:25] Yes, I was about to read the paragraph from his statement

12 [REDACTED]

13 PRESIDING JUDGE MINDUA: [14:22:36](Interpretation) Very well. Please go
14 ahead.

15 MS TAYLOR: [14:22:41]

16 Q. [14:22:41] Now if I could refer to the relevant part of your statement, it's tab 239
17 on the Defence list, that's MLI-OTP-0068-3201 at 3258, it's paragraph 262. It says:

18 "They brought the man out of the vehicle. [REDACTED] His hands
19 were chained together and chained to his feet. He was not resisting. He prayed by
20 kneeling down twice just behind the same vehicle. [REDACTED]

21 [REDACTED] was the mother of the victim and the family. They brought the man to
22 her. Radwan asked her if she would give him her pardon ... She refused. [REDACTED]

23 [REDACTED]
24 [REDACTED]

25 [REDACTED]"

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-67/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 A. [14:24:07] It's true.

2 Q. [14:24:08] Mr Witness, were you aware that the mother and the family of the
3 victim were present because Mr Al Hassan had driven them there that day?

4 A. [14:24:26] No, I didn't know. [REDACTED]

5 [REDACTED] There were other people. [REDACTED]

6 [REDACTED]

7 [REDACTED] I don't know who brought them there. [REDACTED]

8 [REDACTED]

9 Q. [14:25:02] [REDACTED]

10 [REDACTED]

11 [REDACTED]?

12 A. [14:25:19] What I remember is that there were efforts made by everybody for
13 the victim to pardon him, but she didn't.

14 Q. [14:25:38] Now, Mr Witness, [REDACTED]

15 [REDACTED]?

16 A. [14:26:00] Yes.

17 Q. [14:26:01] [REDACTED]

18 [REDACTED]?

19 A. [14:26:21] [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Q. [14:26:58] [REDACTED]

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-68/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 [REDACTED]?

2 A. [14:27:12] Yes.

3 Q. [14:27:16] Now if I could refer to tab 235 on the Defence list, that's

4 [REDACTED] at 1191. Perhaps if we can turn to the first page. Can you see
5 the first page of that item in front of you?

6 A. [14:27:58] No, I don't see it. Which tab?

7 Q. [14:28:02] Tab 235 in the Defence binder.

8 A. [14:28:18] Yes.

9 Q. [14:28:19] Were you --

10 A. [14:28:20] Yes. It's the letter [REDACTED]

11 Q. [14:28:33] Mr Witness, do you mean letter [REDACTED]?

12 A. [14:28:46] I don't know if it's a letter [REDACTED]

13 [REDACTED]
14 [REDACTED]

15 Q. [14:29:14] Were you aware that [REDACTED]

16 [REDACTED]?

17 A. [14:29:30] Yes, [REDACTED]

18 [REDACTED] I wasn't able to read it. [REDACTED]

19 [REDACTED]

20 Q. [14:29:45] Mr Witness, at page 1191 [REDACTED] has written that when he was in
21 Timbuktu he dressed like an Islamist [REDACTED], so he wore short trousers, shaved
22 his moustache and grew his beard. [REDACTED]?

23 A. [14:30:14] Yes, I remember that very well. And I remember that I was very
24 angry with him when I discovered, [REDACTED] he hid the fact
25 that he smoked, [REDACTED] And I noticed that he didn't

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-69/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 have trust in me.

2 Q. [14:30:45] Mr Witness, what do you mean when you say "I noticed that he didn't
3 have trust in me"?

4 A. [14:30:56] [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] I was alone with him and

8 there was no Islamic leader there, but despite that, he [REDACTED] smoke

9 and he did it in hiding, that's something he hid from me, and I thought that was

10 a humiliation, [REDACTED]

11 [REDACTED] that made me

12 angry with him.

13 Q. [14:32:06] Do you recall meeting a young Tuareg called [REDACTED]?

14 A. [14:32:20] Yes, I remember a young man [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q. [14:32:46] I'm going to play a video, it's MLI-OTP-0078-9946, without sound, at
18 the 16 minute mark to the 17 minute mark.

19 (Viewing of the video excerpt)

20 THE WITNESS: [14:34:13](Interpretation) This is not the young man I was referring
21 to. [REDACTED]

22 been flogged because he had been smoking.

23 [REDACTED]

24 [REDACTED] he'd been

25 flogged because he had drunk alcohol rather than because he had smoked, if my

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-70/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 memory serves me well.

2 MS TAYLOR: [14:35:03]

3 Q. [14:35:04] [REDACTED]?

4 A. [14:35:18] I don't recall that now. [REDACTED]

5 [REDACTED]

6 [REDACTED] I don't recall

7 the exact details of this.

8 Q. [14:35:55] [REDACTED]

9 [REDACTED]?

10 A. [14:36:10] I don't recall.

11 Q. [14:36:20] [REDACTED]

12 [REDACTED]?

13 A. [14:36:47] I don't recall that.

14 Q. [14:36:49] [REDACTED]

15 [REDACTED]?

16 A. [14:37:11] [REDACTED]

17 Q. [14:37:18] [REDACTED]?

18 A. [14:37:35] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q. [14:38:01] Now, Mr Witness, you've said that in 2012 [REDACTED] this

22 individual, [REDACTED] you didn't know he'd been

23 flogged for drinking alcohol. When did you first discover that?

24 A. [14:38:20] I don't know how I learnt this, but we understood that he had been

25 flogged because he had smoked. [REDACTED]

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-71/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 [REDACTED] or someone else, I can't recall who, told me that this young man had not told
2 the truth and that he had been flogged for alcohol. I don't recall any more details
3 about that. That's the only thing I can recall about that.

4 Q. [14:39:05] So when [REDACTED] told you he had not told the truth, did
5 he tell you that he had lied about anything else?

6 A. [14:39:18] I don't recall these details, and I don't know whether it was [REDACTED]
7 [REDACTED]; that's a detail. I just recall that initially we understood that he had been
8 flogged because of cigarettes. Because he'd been smoking. And then we learnt that
9 he had lied and that he'd being flogged because of alcohol rather than cigarettes.
10 But I really don't recall who I learnt this from. His parents, a member of the police [REDACTED]
11 [REDACTED] I really don't recall.

12 Q. [14:39:58] [REDACTED] the head of
13 the Islamic police in Gao?

14 A. [14:40:17] Yes.

15 Q. [14:40:18] [REDACTED]?

16 A. [14:40:32] [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Q. [14:41:11] I'm just going to play a video, that's MLI-D28-0004-3325, I'm going to
21 play it without sound. It's tab 107 on the Defence list.

22 MR DUTERTRE: [14:41:33](Interpretation) Mr President.

23 PRESIDING JUDGE MINDUA: [14:41:35](Interpretation) Prosecutor.

24 MR DUTERTRE: [14:41:37](Interpretation) The Prosecution is at a loss to understand
25 the relevance of videos in Gao to the matters with which the Chamber is seized. We

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 don't see the link with the charges.

2 PRESIDING JUDGE MINDUA: [14:41:59](Interpretation) Ms Taylor.

3 MS TAYLOR: [14:42:03] The link will become clear.

4 PRESIDING JUDGE MINDUA: [14:42:12](Interpretation) Please proceed.

5 (Viewing of the video excerpt)

6 MS TAYLOR: [14:42:36]

7 Q. [14:42:37] Do you recognise these images, Mr Witness?

8 A. [14:42:44] Yes. I think this is [REDACTED] the door of the Islamic

9 police under MUJAO in Gao.

10 PRESIDING JUDGE MINDUA: [14:43:05](Interpretation) There a problem with

11 the image. On which channel is the image?

12 MS TAYLOR: [14:43:14] It should be on evidence 2, but we can play it again.

13 (Viewing of the video excerpt)

14 THE WITNESS: [14:43:41](Interpretation) Yes.

15 MS TAYLOR: [14:43:46]

16 Q. [14:43:46] And just for the record, is that the Islamic police in Gao?

17 A. [14:43:55] Yes.

18 Q. [14:43:57] I'd like to play MLI-D28-0004-3326, that's tab 108, without sound.

19 (Viewing of the video excerpt)

20 THE WITNESS: [14:44:29](Interpretation) This is [REDACTED]

21 [REDACTED] the Islamic police commissariat.

22 MS TAYLOR: [14:44:47]

23 Q. [14:44:47] Are these members of the Islamic police?

24 A. [14:44:53] Yes, some of them are members of the Islamic police. Others I don't

25 know. Those in civilian dress, I don't know about them.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-73/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 Q. [14:45:09] If we could turn to tab 160 on the Defence binder, and the -- that's
2 MLI-D28-0004-3474. And, Mr Witness, the Arabic version is tab 256 on the Defence
3 list, that's MLI-OTP-0018-1186. It's part of the new binders that were given to you.

4 A. [14:45:52] (No interpretation)

5 Q. [14:45:54] Do you recognise this email?

6 A. [14:46:02] Yes. [REDACTED]

7 [REDACTED]
8 [REDACTED]

9 Q. [14:46:26] Is it dated [REDACTED] June 2012?

10 A. [14:46:36] Yes.

11 Q. [14:46:38] And in the English it says:

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 A. [14:47:05] Yes.

16 Q. [14:47:09] [REDACTED]?

17 A. [14:47:18] I don't recall that now, [REDACTED]

18 [REDACTED]

19 [REDACTED] I don't recall exactly.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Q. [14:48:15] [REDACTED]

25 [REDACTED]?

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 A. [14:48:32] [REDACTED]
2 [REDACTED]
3 Q. [14:48:48] Mr Witness, can I turn you to tab 249 of the Defence list of exhibits.
4 For the record, it's MLI-OTP-0018-0819. The English is tab 250 on the Defence list of
5 exhibits and it's MLI-OTP-0078-9798.
6 A. [14:49:59] Yes.
7 Q. [14:50:02] Do you recognise [REDACTED]?
8 A. [14:50:10] Yes. [REDACTED]
9 [REDACTED].
10 Q. [14:50:32] Mr Witness, can you turn to page 0820 in the Arabic, and in
11 the English it's 9800. And can you turn to the message of 8 December 2012 at 11:02.
12 A. [14:51:00] Could you please repeat the page reference.
13 Q. [14:51:02] Yes, certainly. In Arabic it's 0820 and it's a message of
14 8 December 2012 [REDACTED]
15 A. [14:51:32] Could you please give me the date of the letter. I found the page, but
16 I would like the date of the letter, please.
17 Q. [14:51:42] Yes, certainly, it's 8 December 2012 [REDACTED]
18 A. [14:51:58] Yes.
19 Q. [14:52:00] [REDACTED]
20 [REDACTED]?
21 A. [14:52:22] But that's clear. That's all in this email. And everything in this
22 email is true.
23 Q. [14:52:32] Now, Mr Witness, Hamad, is that the head of MUJAO?
24 A. [14:52:47] [REDACTED] Hamala, who is one of the
25 founders of MUJAO, Hamala Ould Mohamed Elkhir [REDACTED]

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

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[REDACTED]

Q. [14:53:30] And can you look at the message [REDACTED]

[REDACTED]

A. [14:53:56] Yes, I recall that. I recall that [REDACTED] al-Walid Sahraoui, who's the head in MUJAO, and Hamada, who founded MUJAO together.

Q. [14:54:17] Now, Mr Witness, do you recall telling the Prosecution [REDACTED] that you thought you'd been told about the death [REDACTED] by someone who you thought was [REDACTED]?

A. [14:54:43] [REDACTED], yes, I think so.

Q. [14:54:47] I apologise for my terrible pronunciation.

Now, Mr Witness, if we could turn to tab 240 on the Defence list, it's MLI-OTP-0061-1512 at 1544, paragraph 103, and the English --

A. [14:55:17] 240, was that the tab number?

Q. [14:55:28] Yes, that's correct. And the English is tab 16 on the Prosecution's list, that's MLI-OTP-0024-3096 at 3122, paragraph 103.

I apologise, paragraph 104, which I'll read out for the record:

[REDACTED]

A. [14:56:59] Yes.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-76/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

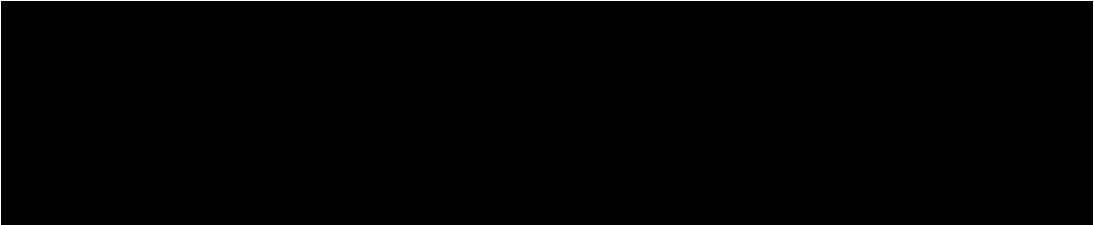
(Open Session)

ICC-01/12-01/18

1 Q. [14:57:01] Do you recall telling the Prosecution this?

2 A. [14:57:07] Yes.

3 Q. [14:57:10] If we could now look at paragraph 107. It states that:

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8 A. [14:58:07] I think so. Yes.

9 MS TAYLOR: [14:58:15] Mr President, I think now would be a good time to finish
10 for the day.

11 PRESIDING JUDGE MINDUA: [14:58:30](Interpretation) We still have three
12 minutes to go in fact, but if you have no further questions, then we will conclude now.
13 But you still have three minutes.

14 MS TAYLOR: [14:58:44] Thank you, I have a series of questions that involve going
15 into a different document, so we would lose the time anyway, by the time we bring it
16 up.

17 PRESIDING JUDGE MINDUA: [14:59:05](Interpretation) You could ask one more
18 question, but we're still in private session.

19 MS TAYLOR: [14:59:11] Actually, I'd like to use the time to address an issue with
20 the transcript. There appears to be a discrepancy between the English and the
21 Arabic and it's transcript page 80, lines 11 to 12. So if that could be verified with
22 the interpreters afterwards. It's quite -- it seems to be quite a significant difference
23 between the English and the Arabic.

24 PRESIDING JUDGE MINDUA: [14:59:41](Interpretation) Very well.

25 I assume that the interpreters heard that and that this will be looked at.

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-77/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 Court officer, we can go back into public session, please.

2 (Open session at 2.59 p.m.)

3 THE COURT OFFICER: [15:00:04] We are in open session, Mr President.

4 MS TAYLOR: [15:00:08] Perhaps when we're in open session, I can read out
5 the discrepancy so it's on the record.

6 PRESIDING JUDGE MINDUA: [15:00:21](Interpretation) Very well. Please
7 proceed.

8 MS TAYLOR: [15:00:24] Apparently the English transcript at page 80, lines 11 to 12
9 states: "The persons who were members of Al-Qaeda went free. They couldn't
10 leave the Al-Qaeda context."

11 Whereas, the Arabic has that Al Hassan was in Timbuktu and he wasn't free to work
12 outside the Al-Qaeda context.

13 So that's the discrepancy we were referring to.

14 PRESIDING JUDGE MINDUA: [15:01:02](Interpretation) Yes. But you've already
15 mentioned the lines.

16 Prosecutor.

17 MR DUTERTRE: [15:01:11](Interpretation) We have a slightly divergent response, so
18 perhaps we could ask the witness what he said exactly.

19 PRESIDING JUDGE MINDUA: [15:01:23](Interpretation) Was it in open session?
20 Because now we're in open session.

21 MR DUTERTRE: [15:01:31](Interpretation) It might not have been in open session,
22 but I don't think it's particularly identifying.

23 PRESIDING JUDGE MINDUA: [15:01:38](Overlapping speakers)

24 MS TAYLOR: [15:01:40] Mr President, I don't believe it's necessary to re-opening
25 the questioning. The point was to have the discrepancy marked on the transcript so

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 it could be verified with the interpreters. If the Prosecutor wishes to ask questions,
2 they can do so during re-examination, not in the middle of our cross-examination.
3 PRESIDING JUDGE MINDUA: [15:02:00](Interpretation) Okay. The interpreters
4 will check this and we will know tomorrow whether -- the fate of this.
5 It is now 3 o'clock. We need to close our session for today.
6 Mr Witness, once again thank you very much and I will call once again on your
7 patience because we will be continuing with your testimony tomorrow. Thank you
8 very much.
9 So tomorrow you will come back here for a 9.30 start. In the meantime, you, as usual,
10 must ensure that you do not talk about your statement with anybody at all.
11 I wish you a restful evening.
12 I would like to thank the parties and the participants. I would also like to thank
13 the court reporters and the interpreters for their work, which is by no means always
14 easy. I would like to thank our security officers and, of course, our public.
15 I wish everybody a very pleasant evening and we will meet again tomorrow morning
16 at 9.30.
17 The session is adjourned.
18 THE COURT USHER: [15:03:35] All rise.
19 (The hearing ends in open session at 3.03 p.m.)
20 CORRECTIONS REPORT
21 The following corrections, marked with an asterisk and not included in the
22 audio-visual recording of the hearing, are brought into the transcript.
23 Page 33 lines 3 to 9
24 "PRESIDING JUDGE MINDUA: [11:33:51] Mr. Prosecutor?"
25 "MR DUTERTRE: [11:33:56] I don't know if it is a translation issue, but we do not

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 know at what time, what date or when. A few moments ago as well, there were some
2 questions about 2012, we do not know if it was before 2012, or after the occupation."

3 "PRESIDING JUDGE MINDUA: [11:34:13] (Interpretation) Ms. Taylor, rephrase the
4 question, please." Are added

5 Page 58 lines 8 to 11

6 "I don't know about all the events, but the major ones, for example, the first flogging
7 or the first sanction that was -- punishment that was given, well, Talha was the one
8 who supervised and ensured a favourable environment for the execution of the
9 punishments, but I can't -- it's not possible to say whether he supervised all the events,
10 the security of all the events."

11 Is corrected to

12 "I wouldn't say all events, but the major ones. For example, the first flogging, or the
13 first *Qisas*, retaliatory punishment, it was Talha who oversaw securing the
14 environment to execute the punishment, but I can't say that he supervised all the
15 events."

16 Page 59 line 24

17 [REDACTED]

18 Page 61 lines 9 to 13

19 "... [REDACTED] that was the general rule, but they were asked to take certain
20 measures to give the impression or illusion [REDACTED] that this was not Al-Qaeda
21 but a national group which had revolutionary objectives and it was they who carried
22 out the acts. That was the message that was passed [REDACTED]

23 [REDACTED]"

24 Is corrected by

25 "[REDACTED] Al-Qaeda. As to them, the reason they brought the

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 locals on at some point was to give the world the illusion that this was not Al-Qaeda
2 but a national group which had national revolutionary objectives and that it was them
3 who carried out the acts. That was the message that was passed [REDACTED]
4 [REDACTED]”

5 Page 64 lines 13 to 24

6 “ [REDACTED]
7 [REDACTED] Al Hassan had a national project.
8 But the difference between him [REDACTED] that was -- the Niafunké group, that
9 was part of the MNLA and there was the choice between levelling the country or
10 being part of Ansar Dine, but in Niafunké town, they themselves, they were not
11 subject to Al-Qaeda, [REDACTED] And so
12 they were members of Ansar Dine but only in name. The persons who were members
13 of Al-Qaeda went free. They couldn't leave the Al-Qaeda context.”

14 Is corrected to

15 “ [REDACTED]
16 that Al Hassan is someone with a national project. But the difference between him
17 [REDACTED] and the group that was in Niafunké, is that they were part of MNLA
18 and were forced to either leave their land or proclaim adherence to Ansar Dine. But
19 in Niafunké, they were not subject to an Al-Qaeda leadership, they were elf-governed,
20 and so they did not enforce *huhud*, [REDACTED]
21 [REDACTED] And so they were members of Ansar Dine but only in name.
22 As to Al Hassan, he was in Timbuktu, under Al-Qaeda's leadership, so even if he had
23 different ideas and objectives, he wasn't free, he couldn't depart from the system that
24 was in force in the city.”

25 Page 74 lines 24-25 to Page 75 lines 1-4

~~ICC-01/12-01/18-T-046-CONF-ENG-ET-16-11-2020-81/81-NB-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 [REDACTED] Hamad. Hamada is one of the founders of

2 MUJAO. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Is corrected to

6 " [REDACTED] Hamala, who is one of the founders of

7 MUJAO, Hamala Ould Mohamed Elkhir. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]